

NAME **Troy A. Bartholmew**PRISON NUMBER **H-18717****Avenal State Prison****P.O. Box 9, 1 Kings Way**

CURRENT ADDRESS OR PLACE OF CONFINEMENT

Avenal, California 93204

CITY, STATE, ZIP CODE

2254	1983
FILING FEE PAID	
Yes	No
HPP MOTION FILED	
Yes	No
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FILED
JUL 14 2008
CLERK, U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA BY KM DEPUTY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

TROY A. BARTHOLOMEW

(FULL NAME OF PETITIONER)

PETITIONER

v.

KATHY MENDOZA-POWERS et al.(NAME OF WARDEN, SUPERINTENDENT, JAILOR, OR AUTHORIZED
PERSON HAVING CUSTODY OF PETITIONER (E.G., DIRECTOR OF THE
CALIFORNIA DEPARTMENT OF CORRECTIONS))**RESPONDENT**

and

The Attorney General of the State of
California, Additional Respondent.

Civil No

'08 CV 1270 IEG NLS

(TO BE FILLED IN BY CLERK OF U.S. DISTRICT COURT)

PETITION FOR WRIT OF HABEAS CORPUSUNDER 28 U.S.C. § 2254
BY A PERSON IN STATE CUSTODY

1. Name and location of the court that entered the judgment of conviction under attack:
N/A: This petition concerns Parole.
2. Date of judgment of conviction: **November 15, 1991**
3. Trial court case number of the judgment of conviction being challenged: **CR-124142**
4. Length of sentence: **Life with the possibility of parole plus 12 years.**

CR

5. Sentence start date and projected release date: **December 26, 1991 and approximately July 2005.**
6. Offense(s) for which you were convicted or pleaded guilty (all counts):
§ § 187(a)/664/189 w/enhancements p.c.12022.5(a) and p.c.12022.7.
7. What was your plea? (CHECK ONE)
- (a) Not guilty ☒
- (b) Guilty ☐
- (c) Nolo contendere ☐
8. If you pleaded not guilty, what kind of trial did you have? (CHECK ONE)
- (a) Jury ☒
- (b) Judge only ☐
9. Did you testify at the trial?
- ☒ Yes ☐ No

DIRECT APPEAL

10. Did you appeal from the judgment of conviction in the California Court of Appeal?
- ☒ Yes ☐ No
11. If you appealed in the California Court of Appeal, answer the following:
- (a) Result: **Judgment Affirmed**
- (b) Date of result (if known): **Nov.9, 1992**
- (c) Case number and citation (if known): **D015967**
- (d) Names of Judges participating in case (if known):
- (e) Grounds raised on direct appeal:
Trial court erred; Excluding third party culpability and Unduly restricting cross examination of witness.
12. If you sought further direct review of the decision on appeal by the California Supreme Court (e.g., a Petition for Review), please answer the following:
- (a) Result: **Denied**
- (b) Date of result (if known): **Apr.27, 1994**
- (c) Case number and citation (if known): **D020780**
- (d) Grounds raised:
- 1) Ineffective Assistance of Appellate Counsel 2)
 Untimely Notification of Appellate Opinion 3)
 Prejudicial Error in Jury Instruction**

13. If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to that petition: N/A
- (a) Result: N/A
 - (b) Date of result (if known):
 - (c) Case number and citation (if known):
 - (d) Grounds raised:

COLLATERAL REVIEW IN STATE COURT

14. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Superior Court?
- ☒ Yes ☐ No
15. If your answer to #14 was "Yes," give the following information:
- (a) California Superior Court Case Number (if known): **Riverside County Superior Court**
 - (b) Nature of proceeding: **Habeas Corpus**
 - (c) Grounds raised: **6th & 8th & 14th Amendment Violations of Due process, Cruel & Unusual Punishment and Equal Protection of the law.**
 - (d) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☒ No
 - (e) Result: **Denied**
 - (f) Date of result (if known): **May 2, 2005**
16. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Court of Appeal?
- ☐ Yes ☒ No

17. If your answer to #16 was "Yes," give the following information: N/A

- (a) California Court of Appeal Case Number (if known):
- (b) Nature of proceeding:
- (c) Names of Judges participating in case (if known)
- (d) Grounds raised:
- (e) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☐ No
- (f) Result:
- (g) Date of result (if known):

18. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Supreme Court?

☐ Yes ☒ No

19. If your answer to #18 was "Yes," give the following information: N/A

- (a) California Supreme Court Case Number (if known):
- (b) Nature of proceeding:
- (c) Grounds raised:
- (d) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☐ No
- (e) Result:
- (f) Date of result (if known):

20. If you did *not* file a petition, application or motion (e.g., a Petition for Review or a Petition for Writ of Habeas Corpus) with the California Supreme Court, containing the grounds raised in this federal Petition, explain briefly why you did not: N/A

COLLATERAL REVIEW IN FEDERAL COURT

21. Is this your **first** federal petition for writ of habeas corpus challenging this **parole?**
☒ Yes ☐ No (If "YES" SKIP TO #22)
- (a) If no, in what federal court was the prior action filed?
 (i) What was the prior case number?
 (ii) Was the prior action (CHECK ONE):
 Denied on the merits? ☐
 Dismissed for procedural reasons? ☐
 (iii) Date of decision:
- (b) Were any of the issues in this current petition also raised in the prior federal petition?
☐ Yes ☐ No
- (c) If the prior case was denied on the merits, has the Ninth Circuit Court of Appeals given you permission to file this second or successive petition?
☐ Yes ☐ No

CAUTION:

- **Exhaustion of State Court Remedies:** In order to proceed in federal court you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. This means that even if you have exhausted some grounds by raising them before the California Supreme Court, you must first present *all* other grounds to the California Supreme Court before raising them in your federal Petition.
 - **Single Petition:** If you fail to set forth all grounds in this Petition challenging a specific judgment, you may be barred from presenting additional grounds challenging the same judgment at a later date.
 - **Factual Specificity:** You must state facts, not conclusions, in support of your grounds. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do. A rule of thumb to follow is — state who did exactly what to violate your federal constitutional rights at what time or place.
-

GROUNDS FOR RELIEF

22. State *concisely* every ground on which you claim that you are being held in violation of the constitution, law or treaties of the United States. Summarize *briefly* the facts supporting each ground. (e.g. what happened during the state proceedings that you contend resulted in a violation of the constitution, law or treaties of the United States.) If necessary, you may attach pages stating additional grounds and/or facts supporting each ground.

(a) **GROUND ONE:** The 2006 Board Panel Failed To Conduct A Fair And Balance Duly Considered Individualized Consideration Hearing For Petitioner Individualized Case Factors; Which Did Not Add To Further Seriousness Of The Convicted Offense; Violating The Sixth Amendment, Fourteenth Amendment And The....
Supporting FACTS: cont'd p.6a

A. The Board Arbitrary Applied The Wrong Factors To Determine Petitioner's Unsuitability To A Parole Release Date.

The Ninth Circuit Court held "that California inmates continue to have a liberty interest in parole after In re Dannenberg. The Sass holding occurred subsequent to Ninth Circuit Court decision in McQuillion v. Duncan, holding that California parole scheme create a liberty interest in parole, noting that California penal code subsec.3041(b) "controls" the resolution of the question because its 'language clearly parallels the language' under consideration in Greenholtz and Allen."

The existence of a liberty interest means that a decision to deny parole must be supported by some evidence and not be otherwise arbitrary.

The protections that were developed in the High Court Precedents Greenholtz and Allen (Parole Liberty Interest), Superintendent (Some Evidence) and Biggs (Indicia of Reliability) bestow necessary provisions in the true application of the statutory..
Did you raise GROUND ONE in the California Supreme Court?

☒ Yes ☐ No.

If yes, answer the following:

- (1) Nature of proceeding (i.e., petition for review, habeas petition): petition for review.
- (2) Case number or citation: S162124
- (3) Result (attach a copy of the court's opinion or order if available):

GROUND FOR RELIEF

(a) GROUND ONE: cont'd...

State and Federal Equal Protection Clause.

Supporting FACTS: cont'd...

language found in California penal code 3041 et seq. and the Board of Parole Hearing Rules and Regulations Article 11. subsec.2400 et sequence.

The 2006 Board panel failed to establish a reasonableness in its decisions that found the prisoner unsuitable for parole for two years(Ex.A.2006 BPH Transcripts, incorporated by reference) within the framework of the above-mentioned provisions closely related to the due process clause.

The instant case, the Board "arbitrary" held that the prisoner "poses an unreasonable risk of danger to public safety", based on no evidence of reoccurring violence(Div.3 Title 15 subsec.3315. Serious Rule Violations.(a)(1)(2)(A)(B)(C)(D)), factual information constituting Administrative Determinants and Circumstances in Aggravation of the Base Term or CIRCUMSTANCES IN AGGRAVATION of the Additional Term for Other Crimes.

There is no current risk assessment that indicate the presence of a psychiatric or psychological condition related to the prisoner's criminality which creates a high likelihood that new serious crimes will be committed if released.

In light of his prior record, the panel failed to duly consider the nature of the pre-offenses, which the "gravity and timing" omits elements of prior assaultive behavior or a significant pattern of increasing serious criminal conduct.

The entire record lacks any circumstances or enhancements that add to the seriousness of petitioner's convicted offense that constitute a current threat to the public order and public safety as highlighted in Attempted Murder Circumstances Category IV.

(6a)

Supporting FACTS: cont'd...

This is in clear error of the duly consideration of all relevant(factual) information that must reliably connect the prisoner's convicted offense that add to further seriousness of the crime in the record that a reasonable person could indicate, petitioner would present a current threat to public safety exceeding his minimum eligible parole date on his actual life term in July 2005 and most importantly, his second subsequent parole consideration hearing held on November 14, 2006. This is the hearing petitioner is asserting his constitutional claims.

B. The State Court's Decision Departed From And Is Contrary To Whether The "Some Evidence" Standard Was Met.

Case law asserts that the "some evidence" standard must point to factors in the record that is "especially egregious" and "exceptional" circumstances of aggravation that are duly considered in compliance with the arrest , charge, conviction and sentencing information relevant to the setting of a parole release date for the potential parolee of a indeterminate sentence.

In the instant case, the court has to reason that the prisoner's arrest history, prior convictions and his indetermine life sentence, cal. p.c.664(a)/189 with enhancements p.c. § 12022.5(a) and 12022.7, does not constitute circumstances of aggravation (p.c.654) to impose a standard of review that is less stringent than the "some evidence" test set forth in re Powell.

Under the BPH matrix scheme for indeterminate life sentences for other than murder by degrees(i.e. attempted murders), petitioner contends that no circumstances exist for good cause that add further to the seriousness of the convicted offenses, that creates an indefinite presumption of a more culpable element of the inmate's crime to be more than minimally necessary to convict him/her of the offense for which he/she is confined.

Supporting FACTS: cont'd...

Furthermore, the opposing district attorney failed to introduce new relevant information that would prevent the potential parolee from fulfilling his parole plans and parole conditions espoused and implied in california statutes(FOR LIFE TERM PRISONERS) beyond mere consideration-as a rehabilitative goal.

The 2006 panel failed to duly consider all requirements of a viable plan, which include parole conditions.

Considering, parolees remain under the legal supervision and jurisdiction of the Department of Corrections and Rehabilitation and can be returned to prison at any time within the legislative authority of california's law.

In addition, parolees are also subject to conditions that govern their residence, associations, ability to travel, use of intoxicants and broader aspects espoused under special conditions of parole.

Parole conditions must be duly considered in every parole consideration hearing as a procedural safeguard to ensure a prisoner's right to present a viable parole plan and to have all relevant information duly considered.

Petitioner, also contends that the 2006 panel inappropriately considered alleged aggravations outside of the factual determination of the entire record; based on assumptions of the victim's vulnerability and the inmate's motives as a fact finding for present unsuitability.

The panel failed to duly consider any post-conviction mitigating circumstances related to rehabilitative efforts that met the standard for parole suitability and release from custody.

In this case, all relevant information should have included:

Petitioner maintained long standing relationships with others without arrest, charge, and conviction of assualtive behavior and possessed no juvenile record.

Petitioner is a high school graduate prior to his incarceration and

Supporting FACTS: cont'd...

have never been known to be a gang member or possess gang ties, a habitual criminal or been involved in tumultuous relationships with others. Also, prior to his adult years he was employable and maintained a steady work history and demonstrated normal development as an adolescent.

Therefore, the board decisions and the reasons cited verbatim on the record from the underlying offense alone does not comport with a fair and balance hearing that duly considered petitioner's Individualized Case Factors in review of the entire picture in his alleged 2006 Individualized Consideration Hearing without an arbitrary and capricious determination in light of clearly established federal law.

The state court decision is objectively unreasonable and prejudicial ; Allowing the board to use allegations outside of the record to support "some evidence" any evidence to find petitioner unsuitable for parole. This is a clear abuse of discretion in violation of the due process clause.

(b) **GROUND TWO:** N/A

Supporting FACTS:

Did you raise GROUND TWO in the California Supreme Court?

☐ Yes ☐ No.

If yes, answer the following:

- (1) Nature of proceeding (i.e., petition for review, habeas petition):
- (2) Case number or citation:
- (3) Result (attach a copy of the court's opinion or order if available):

(c) **GROUND THREE:** N/A

Supporting FACTS:

Did you raise GROUND THREE in the California Supreme Court?

☐ Yes ☐ No.

If yes, answer the following:

- (1) Nature of proceeding (i.e., petition for review, habeas petition):
- (2) Case number or citation:
- (3) Result (attach a copy of the court's opinion or order if available):

(d) **GROUND FOUR:** N/A

Supporting FACTS:

Did you raise GROUND FOUR in the California Supreme Court?

☐ Yes ☐ No.

If yes, answer the following:

- (1) Nature of proceeding (i.e., petition for review, habeas petition):
- (2) Case number or citation:
- (3) Result (attach a copy of the court's opinion or order if available):

23. Do you have any petition or appeal **now pending** in any court, either state or federal, pertaining to the judgment under attack?

☐ Yes ☒ No

24. If your answer to #23 is "Yes," give the following information: **N/A**

(a) Name of Court:

(b) Case Number:

(c) Date action filed:

(d) Nature of proceeding:

(e) Name(s) of judges (if known):

(f) Grounds raised:

(g) Did you receive an evidentiary hearing on your petition, application or motion?

☐ Yes ☐ No

25. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing **Pro Se Litigant**

(b) At arraignment and plea **Pro Se Litigant**

(c) At trial **Pro Se Litigant**

(d) At sentencing **Pro Se Litigant**

(e) On appeal **Pro Se Litigant**

(f) In any post-conviction proceeding .

(g) On appeal from any adverse ruling in a post-conviction proceeding:

26. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

☐ Yes ☒ No

27. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

☐ Yes ☒ No

(a) If so, give name and location of court that imposed sentence to be served in the future:

(b) Give date and length of the future sentence:

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

☐ Yes ☒ No

28. Consent to Magistrate Judge Jurisdiction

In order to insure the just, speedy and inexpensive determination of Section 2254 habeas cases filed in this district, the parties may waive their right to proceed before a district judge and consent to magistrate judge jurisdiction. Upon consent of all the parties under 28 U.S.C. § 636(c) to such jurisdiction, the magistrate judge will conduct all proceedings including the entry of final judgment. The parties are free to withhold consent without adverse substantive consequences.

The Court encourages parties to consent to a magistrate judge as it will likely result in an earlier resolution of this matter. If you request that a district judge be designated to decide dispositive matters, a magistrate judge will nevertheless hear and decide all non-dispositive matters and will hear and issue a recommendation to the district judge as to all dispositive matters.

You may consent to have a magistrate judge conduct any and all further proceedings in this case, including the entry of final judgment, by indicating your consent below.

Choose only one of the following:

☐ Plaintiff consents to magistrate judge jurisdiction as set forth above.

OR

☒ Plaintiff requests that a district judge be designated to decide dispositive matters and trial in this case.

29. Date you are mailing (or handing to a correctional officer) this Petition to this court:

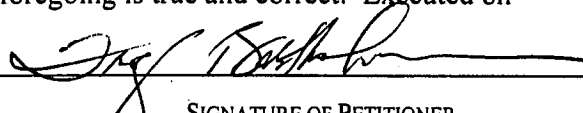
Wherefore, Petitioner prays that the Court grant Petitioner relief to which he may be entitled in this proceeding.

SIGNATURE OF ATTORNEY (IF ANY)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

07/10/08

(DATE)



SIGNATURE OF PETITIONER

Court of Appeal, Fourth Appellate District, Div. 1 - No. D052110
S162124

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re TROY A. BARTHOLOMEW on Habeas Corpus

The petition for review is denied.

**SUPREME COURT
FILED**

MAY 21 2008

Frederick K. Ohlrich Clerk

Deputy

GEORGE
Chief Justice

COURT OF APPEAL - FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

FILED
Stephen M. Kelly, Clerk

MAR 14 2008

In re TROY A. BARTHOLOMEW

D052110

Court of Appeal Fourth District

on

(San Diego County
Super. Ct. No. CR124142)

Habeas Corpus.

THE COURT:

The petition for writ of habeas corpus has been read and considered by Presiding Justice McConnell and Associate Justices Benke and Aaron.

In 1992 a jury convicted petitioner Troy Bartholomew of attempted first degree murder. The jury also found true related firearm and great bodily injury enhancements. The trial court sentenced Bartholomew to a prison term of life with the possibility of parole plus 12 years. He became eligible for parole in 2005.

The circumstances of the commitment offense are as follows: Bartholomew asked an acquaintance, Dr. Hassen Seedat, for a ride to work. Dr. Seedat agreed. At some point during the drive, Bartholomew asked Dr. Seedat for money and Dr. Seedat told Bartholomew that he had none to give. Dr. Seedat subsequently stopped for gas and, when he reentered the car, Bartholomew pointed a gun at Dr. Seedat's face. Dr. Seedat asked Bartholomew what he was doing and Bartholomew replied, "pow." Bartholomew then put the gun away. He told Dr. Seedat that the gun was only a toy and that he was just trying to scare him. Becoming afraid, Dr. Seedat asked Bartholomew where he could drop him off. As Dr. Seedat started driving, Bartholomew pulled the gun out again, loaded it, and fired it at Dr. Seedat five times. Four shots hit Dr. Seedat: one in the arm, one in the shoulder, one in the jaw, and one in the back of the head.

Bartholomew had no clear motive for the crime and, until as recently as 2004, he denied having even committed it. He now accepts full responsibility for the crime and admits his judgment and decision-making processes were impaired at that point in his life, in part because of his poly-substance abuse.

Bartholomew's criminal history includes multiple convictions for theft-related and substance abuse-related crimes. In addition, at the time of the commitment offense, he was on probation for first degree burglary.

During his incarceration, Bartholomew has received three disciplinary actions and four disciplinary counselings. The most recent disciplinary action was in 1995 and the most recent disciplinary counseling was in 1993.

Bartholomew had completed high school prior to his incarceration and, during his incarceration, he has completed some college level general education coursework. In addition, he has completed vocational training in landscaping, silk-screening, and shoe repair. He is also a talented artist and hopes to obtain training in graphic arts or some similar field that would allow him to earn a living with his talent. He currently works in the prison kitchen, receiving average to exceptional ratings.

Upon parole, Bartholomew plans to live in San Diego with his fiancée. He has Diego: He has also developed contacts with employment agencies, job referral agencies, and community services agencies in San Diego that can help him transition from incarceration to parole.

Bartholomew has completed several prison self-help programs, including anger management, communication skills, victim awareness, stress management, and rehabilitation techniques. He is currently participating in Alcoholics Anonymous, Narcotics Anonymous, and Criminon programs.

The most recent mental health evaluation of Bartholomew indicates that he does not have any psychiatric or thought disorders. The evaluation also indicates that Bartholomew's danger risk upon parole "would not be significantly greater than that of an average citizen in society."

In November 2006, after considering the above information, the Board of Parole Hearings (Board) found Bartholomew unsuitable for parole. The Board based its decision on the circumstances of the commitment offense as well as Bartholomew's other criminal history, which includes some assaultive behavior. Regarding the circumstances of the commitment offense, the Board found that the crime was especially cruel and callous. The Board also found that Bartholomew carried out the crime in a dispassionate and calculated manner. Of particular concern to the Board was the inexplicable motive for the crime. Because of this and the fact that Bartholomew had only recently accepted responsibility for the crime, the Board could not confidently determine Bartholomew's level of insight into the crime. Consequently, the Board found that Bartholomew remained unpredictable and a threat to public safety.

Bartholomew filed this petition challenging the Board's decision. We conclude Bartholomew has failed to state a prima facie case for relief. (*People v. Duvall* (1995) 9 Cal.4th 464, 474-475.)

In reviewing the decision of the Board to deny parole, this court's inquiry is limited to determining whether there is some evidence in the record to support the Board's decision, based on factors specified by statute and regulation. (*In re Rosenkrantz* (2002) 29 Cal.4th 616, 658.) In this case, the record, as described above, contains ample evidence to support the Board's decision. The record also establishes that the Board relied upon appropriate factors in reaching its decision. (Cal. Code Regs., tit. 15, § 2402.) The Board did not, as Bartholomew contends, ignore the factors tending to show suitability. To the contrary, the Board reviewed each of these factors and was highly complimentary of Bartholomew's prison programming. The Board simply concluded that the factors tending to show unsuitability currently outweigh the factors tending to show suitability. Our standard of review does not permit us to reweigh these factors. (*Rosenkrantz, supra*, 29 Cal.4th at p. 679.)

The petition is denied.



AARON, Acting P. J.

Copies to: All parties

AUG 10 2007

By: C. JAMES, Deputy

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

IN THE MATTER OF THE APPLICATION OF:

TROY BARTHOLOMEW,

Petitioner.

HC 18988
CR 124142

ORDER DENYING PETITION FOR
WRIT OF HABEAS CORPUS

UPON REVIEW OF THE PETITION FOR WRIT OF HABEAS CORPUS THE
COURT FINDS:

On December 26, 1991, the Court sentenced Petitioner to the indeterminate term of life plus 12 years for one count of attempted first-degree murder (Penal Code §§ 187(a)/664/189) and the allegation that he personally used a firearm (Penal Code § 12022.5(a)) and caused great bodily injury (Penal Code § 12022.7), the offenses for which a jury had found him guilty on November 15, 1991.

Petitioner filed a timely appeal, but on or about November 9, 1992, the Fourth District Court of Appeal affirmed the judgment.

Petitioner's actual life term began on July 12, 1998, and his minimum eligible parole date was July 12, 2005. The first parole consideration was held on September 8, 2004, at which time Petitioner was found unsuitable for parole for two years. The first subsequent parole consideration hearing was held on November 14, 2006, and at the end of that hearing the Board

1 of Parole Hearings (BPH) denied Petitioner's parole for two years. This Petitioner's next parole
2 suitability is scheduled to take place sometime in 2008.

3 Petitioner has now filed the present petition for writ of habeas corpus challenging that
4 decision, based on grounds that the BPH is depriving him of a federally protected liberty interest
5 in parole, that the BPH conducted the hearing improperly on procedural grounds and that the
6 BPH failed to provide due consideration of the factors tending to show suitability. In summary,
7 Petitioner claims he was found unsuitable for parole with no evidence to support or substantiate
8 these findings.

9 This present Petition is denied for the following reasons.

10 First, for whatever reason, Petitioner has failed to provide pages 28 through 43 of the
11 transcript from the November 14, 2006, hearing, including the first two pages of the BPH's
12 decision. It is unknown whether this omission was purposeful because Petitioner does not want
13 the Court to review the entire record, or by simple neglect to send the entire record.

14 Regardless of the reason, however, without the ability to review the entire record this
15 Court must deny the Petition. A Petitioner in habeas corpus bears the burden of proving the facts
16 upon which he bases his claim for relief. In re Riddle (1962) 57 Cal.2d 848, 852. Every
17 Petitioner, even one filing in pro per, must set forth a prima facie statement of facts which would
18 entitle him to habeas corpus relief under existing law. In re Bower (1985) 38 Cal.3d 865, 872.

19 This burden has not been met on this reason alone.

20 Second, a review of the documentation Petitioner did provide shows that there was,
21 indeed, evidence presented to the BPH and considered by it that indicated that this Petitioner was
22 not yet suitable for parole.

23 It is clear that the BPH did consider the commitment offense and while Petitioner had the
24 right not to discuss the circumstances of that crime at the hearing, there is a strong implication
25 that the panel members would certainly have considered, and wanted to consider, what Petitioner
26 had to say about it.

27 The presiding commissioner set the tone early when she said, "Sir, I understand that it is
28 your right to exercise your right not to speak about the criminal offense. However, I will tell you

1 that at the outset that to this Panel this crime is inexplicable. This appears from what we have in
2 front of us to be a reasonable law-abiding citizen who is giving you a ride, and you got in the car,
3 and you shot him." (Transcript, page 8:10-17).

4 This same conclusion was noted several times again when the decision was being
5 rendered at the end of the hearing: "This offense was carried out in an especially cruel and
6 callous manner in that the victim . . . was particularly vulnerable as he was giving you a ride in
7 his van." (Transcript, page 44:10-13). "This offense was carried out in a dispassionate and
8 calculated manner in that . . . [Y]ou loaded the gun with bullets and then began shooting at [the
9 victim's] face hitting him four times. This offense was carried out in a manner demonstrating
10 exceptionally callous disregard for human suffering." (Transcript, page 44:16-25). "The motive
11 for this crime is moreover inexplicable. This is the most troubling part to the Panel." (Transcript,
12 page 45:8-9).

13 What also troubled the panel was that, even though the crime was committed in 1991, it
14 was not until many years later that Petitioner finally admitted commission of the offense. "In
15 2004, you claimed to the psychologist that you didn't commit this crime, and in fact, it appears
16 only recently and including today that you're taking responsibility for this offense. The Panel,
17 therefore, has to believe that your insight and therefore your understanding of the nature and
18 magnitude of this crime is as of yet undetermined, and you remained unpredictable and a threat
19 to public safety." (Transcript, page 45:17-24).

20 The BPH's comments were not all negative. "As you presented here today, and you
21 presented very well. You presented as a mature adult. You obviously have talents and have done
22 impressive programming here in the institution and other institutions. And you have embarked
23 on a program of disciplinary behavior." (Transcript, page 45: 9-14).

24 Therefore, before going any further, it is clear that the BPH believed that, even though it
25 was definitely becoming more positive, Petitioner still presented a risk to society and there were
26 other factors than just the commitment offense that prevented obtaining a parole date.

27 Petitioner asked at the end of the decision what he could do so that he could be found
28 suitable in the future. The presiding commissioner was very clear and also left no doubt

1 regarding the major basis for the decision: "If you continue the programming – right now, your
2 unsuitability just doesn't outweigh the – it outweighs rather the suitability factors that you have
3 at this time. You have suitability factors, but you also have – you have factors of unsuitability
4 that we had to consider. . . . The fact that you just recently took responsibility for this crime.
5 You've been denying this crime for a long time, and it's on record. And that's all we are to go
6 by, is that. But today, you've taken responsibility for it, as recently as 2004, you did not. So
7 that's what we have on our record, and that's what we have to deal with, sir. And that's the basis.
8 But I would encourage you to continue because you do present well, and you would be a good
9 candidate at some point." (Transcript, page 47:2-16)

10 Therefore, from what this Court was able to review, it is clear that the BPH did consider
11 the requisite factors, but the major concern was that Petitioner was just beginning to take
12 responsibility for what was an inexplicable crime that he has yet to fully explain. Together, this
13 provided an uncertainty about future behavior about which the BPH was not willing to risk at
14 this time.

15 By statute, when determining suitability for parole, the parole board "shall normally set a
16 parole release date" (Penal Code § 3041(a)) "unless it determines that the gravity of the current
17 convicted offense or offenses, or the timing and gravity of a current or past convicted offense or
18 offenses, is such that consideration of the public safety requires a more lengthy period of
19 incarceration for this individual." (Penal Code § 3041(b)). The state Legislature has given the
20 BPH the power to establish the rules and regulations regarding release on parole. (Penal Code §
21 3052.) The BPH regulations require a panel determining parole suitability for a life prisoner to
22 find the prisoner unsuitable for parole if, in the judgment of the panel, the prisoner will pose an
23 unreasonable risk of danger to society if released from prison. (California Code of Regulations,
24 Title 15 [hereafter 15 C.C.R.] §§ 2281(a), 2402(a).) The BPH should consider all relevant,
25 reliable information available to it, including the prisoner's social history, past and present
26 mental state, criminal history, commitment offenses, behavior before, during and after the crime,
27 attitudes toward the crime, and any other information that bears on the prisoner's suitability for
28 release on parole. (15 C.C.R. §§ 2281(b), 2402(b).)

The BPH has also set forth general factors that tend to show suitability and unsuitability for parole. (15 C.C.R. §§ 2281(c)-(d), 2402(c)-(d).) The following are the factors tending to show *unsuitability* for parole that the parole board should consider:

(1) Commitment Offense. The prisoner committed the offense in an especially heinous, atrocious or cruel manner. The factors to be considered include:

(A) Multiple victims were attacked, injured or killed in the same or separate incidents.

(B) The offense was carried out in a dispassionate and calculated manner, such as an execution-style murder.

(C) The victim was abused, defiled or mutilated during or after the offense.

(D) The offense was carried out in a manner which demonstrates an exceptionally callous disregard for human suffering.

(E) The motive for the crime is inexplicable or very trivial in relation to the offense.

(2) Previous Record of Violence. The prisoner on previous occasions inflicted or attempted to inflict serious injury on a victim, particularly if the prisoner demonstrated serious assaultive behavior at an early age.

(3) Unstable Social History. The prisoner has a history of unstable or tumultuous relationships with others:

(4) Sadistic Sexual Offenses. The prisoner has previously sexually assaulted another in a manner calculated to inflict unusual pain or fear upon the victim.

(5) Psychological Factors. The prisoner has a lengthy history of severe mental problems related to the offense.

(6) Institutional Behavior. The prisoner has engaged in serious misconduct in prison or jail.

(15 C.C.R. § 2402(c).)

The following are the factors tending to show *suitability* for parole that the parole board should consider:

(1) No Juvenile Record. The prisoner does not have a record of assaulting others as a juvenile or committing crimes with a potential of personal harm to victims.

(2) Stable Social History. The prisoner has experienced reasonably stable relationships with others.

(3) Signs of Remorse. The prisoner performed acts which tend to indicate the presence of remorse, such as attempting to repair the damage, seeking help for or relieving suffering of the victim, or indicating that he understands the nature and magnitude of the offense.

(4) Motivation for Crime. The prisoner committed his crime as the result of significant stress in his life, especially if the stress has built over a long period of time.

(5) Battered Woman Syndrome. At the time of the commission of the crime, the prisoner suffered from Battered Woman Syndrome, as defined in section 2000(b), and it appears the criminal behavior was the result of that victimization.

(6) Lack of Criminal History. The prisoner lacks any significant history of violent crime.

(7) Age. The prisoner's present age reduces the probability of recidivism.

(8) Understanding and Plans for Future. The prisoner has made realistic plans for release or has developed marketable skills that can be put to use upon release.

(9) Institutional Behavior. Institutional activities indicate an enhanced ability to function within the law upon release.

(15 C.C.R. § 2402(d)).

1 The precise manner in which these specified factors are considered and balanced lies
2 within the broad discretion of the BPH, but any decision to deny parole cannot be arbitrary or
3 capricious. In re Rosenkrantz (2002) 29 Cal.4th 616, 656-657, 677 (Rosenkrantz.) Thus, the
4 standard is that a life prisoner such as Petitioner should be granted parole unless the BPH finds,
5 in the exercise of its broad discretion, the prisoner is unsuitable for parole in light of the
6 circumstances specified by statute and by regulation. (See Rosenkrantz, supra, 29 Cal.4th at
7 654-655.) The overriding factor in determining whether a prisoner is suitable for parole is public
8 safety. (Penal Code § 3041; 15 C.C.R. § 2402(a); In re Dannenberg (2005) 34 Cal.4th 1061,
9 1084 (Dannenberg); In re Scott (2005) 133 Cal.App.4th 573, 591 (Scott).)

10 Judicial review of the BPH's decision whether a prisoner is suitable for parole is limited
11 to a determination of whether the factual basis for the decision is supported by some evidence in
12 the record presented to the parole board that has some indicia of reliability. (Rosenkrantz, supra,
13 29 Cal.4th at 667; Scott, supra, 133 Cal.App.4th at 590-591.) This standard of review requires
14 only a "modicum of evidence." (Rosenkrantz, supra, 29 Cal.4th at 677.) It is within the BPH's
15 discretion to decide how to resolve conflicts in the evidence and to decide how much weight to
16 give each factor. (Id. at 656, 677.) "It is irrelevant that a court might determine that evidence in
17 the record tending to establish suitability for parole far outweighs evidence demonstrating
18 unsuitability for parole." (Id. at 677.) As long as the BPH's decision reflects individualized
19 consideration of the specified criteria and legal standards, and is not arbitrary or capricious, the
20 court's review is limited to ascertaining whether there is some evidence in the record that
21 supports the decision.

22 The key here is that, no matter how much or how little this Court believes that this
23 Petitioner may or may not be suitable for parole, it can only review the case through the eyes of
24 the law stated immediately above.

25 Petitioner argues that there was insufficient evidence, when all factors were considered,
26 to deny parole. However, it is clear from the above quotations that the BPH focused on the belief
27 that Petitioner was not yet ready for parole because, although he was following the proper
28 approach to becoming suitable, he was not at that point yet.

1 Thus, there was more than "some evidence" to support the BPH's decision finding
2 Petitioner unsuitable for release on parole, because of all of the above, even though he had made
3 advances while being incarcerated.

4 The federal courts indeed have found the language of Penal Code § 3041 creates a liberty
5 interest in release on parole, which is protected by the procedural safeguards of the due process
6 clause. (Biggs v. Terhune (9th Cir. 2003) 334 F.3d 610, 614; McQuillion v. Duncan (9th Cir.
7 2002) 306 F.3d. 895, 902-903; see also, Rosenkrantz, supra, 29 Cal.4th at 653.) However, the
8 California Supreme Court has recently found that whether a prisoner is suitable for parole trumps
9 the prisoner's expectancy of a set parole date. (Dannenberg, supra, 34 Cal.4th at 1070-1071
10 ["The statutory scheme, viewed as a whole, thus clearly elevates a life prisoner's individual
11 suitability for parole above the inmate's expectancy in early setting of a fixed and "uniform"
12 parole date."]) Thus, there is no violation of a prisoner's liberty interest if the parole board
13 properly denied parole.

14 A decision to deny parole can be based on the nature of the prisoner's underlying offense
15 alone, as long as the parole board has given due consideration to all applicable factors regarding
16 suitability for parole (Rosenkrantz, supra, 29 Cal.4th at 677, 682-683; see also, Scott, supra, 133
17 Cal.App.4th at 594-595), and the circumstances of the commitment offense reasonably could be
18 considered more aggravated or more violent than the minimum necessary to sustain a conviction
19 for that offense (Rosenkrantz, supra, at 678, 683; see also, Dannenberg, supra, 34 Cal.4th at
20 1098.)

21 Certainly this BPH panel considered the circumstances surrounding the inexplicable
22 shooting which resulted in the great bodily injuries of someone vulnerable because he was
23 simply providing an acquaintance a ride. But it is also obvious that the panel was not basing its
24 parole suitability denial on the commitment offense alone. In fact, there was a strong implication
25 at the end of the decision that parole may be in Petitioner's future when the commissioner said
26 that he could be a good candidate for the future if he continued his upward progress.

27 The parole board in this case did not rely solely on Petitioner's commitment offense in
28 denying him parole as discussed above. A careful reading of the portion of the transcript of the

1 hearing and decision that was provided shows that the BPH gave due consideration to all the
2 applicable factors regarding suitability for parole as set forth in 15 C.C.R. §2402(c), (d).

3 After weighing the above factors, the BPH apparently determined the positive aspects did
4 not outweigh the unsuitability for parole, and denied parole until another hearing, apparently set
5 for sometime now in 2008.

6 Thus, based on the above, there is "some evidence" in the record to support the BPH's
7 finding that Petitioner is unsuitable for parole. This Court finds no abuse of the BPH's discretion
8 is apparent in this case.

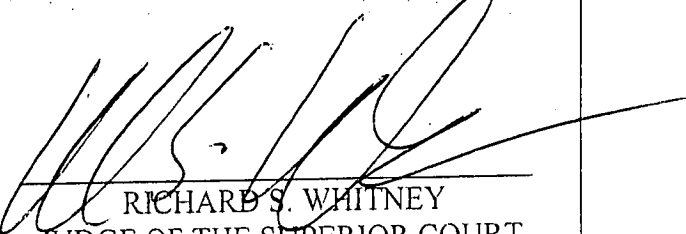
9 This Court makes no ruling or holding on the positive or negative merit of this or any
10 other Petitioner's arguments. While Petitioner may not appeal this decision, he has the right to
11 present his issues to a higher court in a different habeas corpus petition.

12 The petition for writ of habeas corpus is DENIED for the reasons stated.

13 A copy of this order shall be served on the (1) Petitioner at the address noted on the title
14 page of the petition; and (2) the Appellate Division of the Office of the San Diego District
15 Attorney.

16 IT IS SO ORDERED.

17 DATED: 8/10/07


18 RICHARD S. WHITNEY
19 JUDGE OF THE SUPERIOR COURT
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28

PROOF OF SERVICE BY MAIL

I THE UNDERSIGNED, CERTIFY THAT I AM OVER THE AGE OF EIGHTEEN (18) YEARS OF AGE. THAT I
CAUSED TO BE SERVED A COPY OF THE FOLLOWING DOCUMENT:

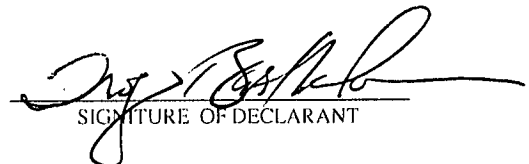
ENTITLED: Petition For Writ of Habeas Corpus
Under 28 U.S.C. § 2254

BY PLACING THE SAME IN AN ENVELOPE, SEALING IT BEFORE A CORRECTIONAL OFFICER,
AND DEPOSITING IT IN THE | UNITED STATES MAIL | AT AVENAL STATE PRISON AND ADDRESSED IT
TO THE FOLLOWING:

SOUTHERN DISTRICT OF CALIFORNIA
880 Front St., Rm. 4290,
San Diego, CA 92101-8900
Att: W. Samuel Hamrick Jr.

EXECUTED ON July 10 20 08 AT AVENAL STATE PRISON, AVENAL CALIFORNIA

I, Troy Bartholmew DECLARE UNDER THE PENALTY OF PERJURY UNDER THE LAW
OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.


SIGNATURE OF DECLARANT

Mr. Troy Bartholmew
PRINT NAME OF DECLARANT

PRO PER.

EXHIBIT A: 2006 SUBSEQUENT PAROLE CONSIDERATION
HEARING TRANSCRIPTS AND ABSTRACT OF
JUDGMENT FOR COMMITMENT TO STATE
PRISON

SUBSEQUENT PAROLE CONSIDERATION HEARING

STATE OF CALIFORNIA

BOARD OF PAROLE HEARINGS

In the matter of the Life)
Term Parole Consideration)
Hearing of:)

CDC Number H-18717

TROY BARTHOLOMEW)
_____)

AVENAL STATE PRISON

AVENAL, CALIFORNIA

NOVEMBER 14, 2006

1:54 P.M.

PANEL PRESENT:

Ms. Sandra Bryson, Presiding Commissioner
Mr. Bill Keenan, Deputy Commissioner

OTHERS PRESENT:

Mr. Troy Bartholomew, Inmate
Mr. Anthony Hall, Attorney for Inmate
Correctional Officers, Unidentified

INMATE
COPY

CORRECTIONS TO THE DECISION HAVE BEEN MADE

_____ No
_____ Yes

See Review of Hearing
Transcript Memorandum

Priscilla Baker

Vine, McKinnon & Hall

1

P R O C E E D I N G S

DEPUTY COMMISSIONER KEENAN: We're on record.

PRESIDING COMMISSIONER BRYSON: Okay. This is the first subsequent parole consideration hearing for Troy Bartholomew, CDC number, H Henry, 18717. Today's date is November 14th, 2006, and the time is 13:54. We're located at Avenal State Prison. The inmate was received January 2, 1992, from San Diego County. The life term began July 12th, 1998. The minimum eligible parole date is July 12th, 2005. Charging in case number CR, that's Charles Robert, 124142, Count Number 1, the controlling offense Penal Code 664 slash 187 (A) attempted murder first with Penal Code 12022.5 (A) use of a handgun, Penal Code 12022.7, special allegation of great bodily injury with controlling -- or excuse me, with non-controlling offenses. San Diego case number CRN, that's Charles, Robert, Nancy, 15678, Count 2, Penal Code 459 burglary first, and San Diego, Charles, Robert, 101305 in Count 1, Vehicle Code 10851 A, theft of vehicle, for which the inmate received a term of life plus 12 years. This hearing is being recorded. For the purpose of voice identification, each of us will state our first and last name, spelling the last name. After you spell your last name, sir, please state your CDC number. I will start and then go to my right. Sandra Bryson, B-R-Y-S-O-N, Commissioner Board of Parole Hearings.

DEPUTY COMMISSIONER KEENAN: Bill Keenan,

1 K, double E, N-A-N, Deputy Commissioner.

2 **ATTORNEY HALL:** Anthony Hall, H-A-L-L, attorney for
3 Mr. Bartholomew.

4 **INMATE BARTHOLOMEW:** Troy Bartholomew,
5 B-A-R-T-H-O-L-O-M-E-W, H-18717.

6 **PRESIDING COMMISSIONER BRYSON:** All right. Thank
7 you. And I note for the record, we have two correctional
8 peace officers in the room who are here for security
9 purposes. And Commissioner Keenan, is there any
10 confidential material in the file. And if so, will it be
11 used today?

12 **DEPUTY COMMISSIONER KEENAN:** We do have confidential
13 information. It will not be used unless otherwise
14 specified during the course of this hearing.

15 **PRESIDING COMMISSIONER BRYSON:** Thank you. All
16 right. I've passed the hearing checklist marked Exhibit
17 1 to your attorney, sir, to insure that we're all
18 proceeding with the same set of documents. And I noticed
19 that your attorney has initialed the hearing checklist,
20 so that therefore, sir, I believe you have all the
21 documents; is that correct?

22 **ATTORNEY HALL:** Partially. With the exception of
23 this sentencing transcript, we have all the documents,
24 but we didn't get a copy of the sentencing transcript.

25 **PRESIDING COMMISSIONER BRYSON:** Of the sentencing.
26 I will make note of that. I'm not sure if it's in my
27 packet or not. We will look into that. Thank you. And

1 I was just handed by the officer, I believe you are
2 submitting additional documents; is that correct?

3 **ATTORNEY HALL:** That's correct.

4 **PRESIDING COMMISSIONER BRYSON:** All right. And sir,
5 today you and your attorney signed the form marked
6 Exhibit 2 regarding ADA accommodation hearing procedures
7 and inmate's right. And counsel, do you have any
8 comments or concerns regarding the ADA rights or this
9 inmate's ability to participate in this hearing?

10 **ATTORNEY HALL:** No Commissioner.

11 **PRESIDING COMMISSIONER BRYSON:** Thank you. Are
12 there any preliminary objections?

13 **ATTORNEY HALL:** There is none.

14 **PRESIDING COMMISSIONER BRYSON:** Will the inmate be
15 speaking with the Panel today?

16 **ATTORNEY HALL:** The inmate will be discussing all
17 issues at the discretion of the Board, except he will not
18 discuss the facts and circumstances of the commitment
19 offense. He has accepted and hopes the Board will accept
20 the official record of his conduct in the crime.
21 However, he will not discuss the facts and circumstances
22 of the crime.

23 **PRESIDING COMMISSIONER BRYSON:** All right. Well, if
24 you're going to speak to us at all, I need to swear you
25 in. So would you raise your right hand, please. Do you
26 solemnly swear or affirm that the testimony you give at
27 this hearing will be the truth, the whole truth, and

1 nothing but the truth?

2 **INMATE BARTHOLOMEW:** Yes, ma'am.

3 **PRESIDING COMMISSIONER BRYSON:** Okay. Sir, it would
4 probably be a good idea if you could pull that a little
5 closer to you. Thank you. I'm not sure -- All right.
6 Thank you, officer. Okay. I'm going to read the facts
7 of the crime into the record as set forth in the
8 appellate decision, and this is Court of Appeals State of
9 California 4th Appellate District, Division 1, People V
10 Troy Anthony Bartholomew. This is, D David, 015967
11 Superior Court No. CR 124142, and this was filed November
12 9th of 1992, and starting on page one as to factual and
13 procedural background.

14 "On June 25th, 1991, Dr. Hassen Seedat, that's
15 S-E-E-D-A-T, an active member of the Muslim
16 community rented an apartment at the Winone
17 Apartment Complex in San Diego, all though his
18 principal residence was in El Centro. He knew
19 a number of Muslims who lived in his complex
20 through his religion. Seedat first met
21 Bartholomew as Abdul, that's A-B-D-U-L, Oawi,
22 O-A-W-I, in 1990 in the apartment complex's
23 prayer room. Between September 90th, 1990, and
24 June 1991, Seedat saw Bartholomew on four or
25 five occasions. Bartholomew worked at the
26 complex as a janitor and in the garden. Dr.
27 Seedat testified the following occurred on June

1 25th. At approximately 9:00 a.m., he was
2 walking toward his van in a parking lot when
3 Bartholomew approached and asked him for a ride
4 to work. The two entered the van and Seedat
5 drove from the rear to the front of the complex
6 where they stopped to wait for a man named
7 Dawud, D-A-W-U-D, who was joining them. Around
8 9:30 Bartholomew went to look for Dawud. After
9 he returned, Seedat waited 10 to 15 minutes
10 longer. He then went looking for Dawud.
11 Eventually they left without Dawud around
12 10:30. After stopping at a post office, Seedat
13 stopped for gas. When he reentered the car,
14 Bartholomew pointed the gun at his face. When
15 Seedat asked what Bartholomew was doing,
16 Bartholomew replied, quotes "Pow" end quotes..
17 And said it was only a cap gun, and he was
18 trying to scare him. Bartholomew put the gun
19 away. After Seedat pulled away, Bartholomew
20 again pulled the gun. He shot Seedat five
21 times, hitting him in the arm, shoulder, jaw,
22 and back of the head. A nearby resident heard
23 the shots. He saw a black man in his mid 20's,
24 5 foot 11 inches and a 150 to 160 pounds,
25 wearing a black tee shirt jog from the scene.
26 A second witness was walking down the street
27 when she heard the shots. She saw a man

1 approximately 6 feet 1 inch weighing 160 or 170
2 run from the scene. San Diego police officer
3 Julie Chavez, that's C-H-A-V-E-Z, was in a
4 patrol car a block a way. She went to the
5 scene and Seedat said he had offered a friend
6 Abdul a ride to work. The friend shot him and
7 fled. Seedat described Abdul as a thin 5 foot
8 9 inch black male in his 20's wearing a black
9 tee shirt. On June 28th, a San Diego police
10 officer went to the Winone Apartments. With
11 the assistance of a K-9 officer, Bartholomew
12 was found hiding in a linen closet."

13 This inmate has no note of juvenile record. And I
14 will incorporate by reference this inmate's prior
15 history per the California Identification
16 Investigation Account commonly called the CI&I wrap
17 sheet account of his criminal history noting that
18 during a three-year period culminating in the life
19 crime, this inmate was convicted for a number of
20 crimes including vehicle theft, stolen property,
21 presenting false ID (inaudible) and DUI, driving
22 under the influence, controlled substance, and
23 driving suspended, also a burglary in Oceanside.
24 And I would also like to read into the record the
25 personal factors and then we'll talk about your
26 personal history with the extent that you would like
27 to talk about it. As to the Board packet dated

1 September 2006, this is authored by D period Tavak,
2 T-A-V-A-K, the correctional counselor one. As to
3 personal factors on page three of the Board report.
4 Bartholomew was born and raised by his grandmother
5 Luella Mitchell in New Orleans, Louisiana, after his
6 birth mother Arnolla Mitchell was murdered. He was
7 seven years old when she was killed of a gunshot.
8 His grandmother moved him out with her to California
9 shortly thereafter, and she passed away when she was
10 about 21 years of age. His father Paul Bartholomew
11 divorced his mother, and Bartholomew still thinks he
12 still resides in New Orleans as a retired
13 businessman. Does not maintain any contact with
14 him. He has three brothers and three sisters: Paul
15 Bartholomew, 45, a carpenter in San Diego. Receives
16 calls and writes to him, no visits. Miguel
17 Humphrey, 38, unknown. Rudy Humphrey, 25, roofer in
18 San Diego, calls and writes him. No visits. Shonna
19 Brooks, that's S-H-O-N-N-A, Brooks, 49, housewife,
20 San Diego, calls and writes him. No visits. Ann
21 Rosenell, R-O-S-E-N-E-L-L, Maxwell, 47, housewife,
22 North Carolina, writes to him. And Patrice
23 Humphrey, 30, unknown. He has an 18-year-old
24 daughter Arnolla Bartholomew who is currently going
25 to college in Texas. She lives with her mother.
26 That's Phlysta, P-H-L-Y-S-T-A, Russell, and has had
27 recent contact with him prior to leaving the state

1 for school. Phlysta Russell and Bartholomew never
2 married. Bartholomew did later marry Margaret
3 Collins, but the marriage lasted only one year and
4 end shortly after his coming to prison. Bartholomew
5 stated he graduated in 1983 from Morris High School
6 in San Diego California. Has held numerous jobs
7 including roofer, painter, bagging, working on
8 resurfacing yachts, and maintenance of apartments.
9 He stated he began using drugs when he was
10 approximately 18 years old. All right. Sir, I
11 understand that it is your right to exercise your
12 right not to speak about the criminal offense.
13 However, I will tell you that at the outset that to
14 this Panel this crime is inexplicable. This appears
15 from what we have in front of us to be a reasonable
16 law-abiding citizen who was giving you a ride, and
17 you got in the car, and you shot him. And it's just
18 amazing he did not die under these circumstances
19 having been shot four times, basically wounded four
20 times. He was -- one of them to the head. And one
21 going across his throat, the third shot entering his
22 jaw, and a shot going under the shoulder and lodging
23 at the base of his neck. It's just an amazing fact
24 that he survived. And so what will help us in this
25 regard even though you don't wish to speak about the
26 crime. What will help us perhaps understand this a
27 bit is if there's material or information you'd like

1 to include and tell us about your prior history to
2 see what could have led you to be in such a state.
3 You do have a prior criminal history. And you were,
4 I believe, on probation at the time of the
5 commitment offense, which is that true?

6 **INMATE BARTHOLOMEW:** Yes, ma'am.

7 **PRESIDING COMMISSIONER BRYSON:** Yes. Okay.
8 Would you like to explain what was going on with
9 your life so that you were in this up until the life
10 crime? What happened in your crime to bring you to
11 this?

12 **INMATE BARTHOLOMEW:** I think in my life at the
13 particular time, I was just doing things that were
14 unconscious. That were not, you know, very decision
15 things. And I can't blame and say that anyone led
16 me to that or helped me do that because I have to
17 take the responsibility myself. But things in life
18 in which I was doing was very unconscious. I wasn't
19 thinking very clearly at that particular time nor
20 were my actions reflecting of the thoughts or
21 behavior.

22 **PRESIDING COMMISSIONER BRYSON:** Were you a drug
23 user?

24 **INMATE BARTHOLOMEW:** Yes, ma'am.

25 **PRESIDING COMMISSIONER BRYSON:** Okay. And when
26 did that start? When did you start using drugs?
27 Was it drugs and alcohol? Was it just drugs? What

1 was it?

2 **INMATE BARTHOLOMEW:** Drugs and alcohol.

3 **PRESIDING COMMISSIONER BRYSON:** Drugs and
4 alcohol. How did you get started down that road; do
5 you know?

6 **INMATE BARTHOLOMEW:** I think that was beginning
7 like (inaudible) of that nature. You know,
8 experimenting, first and foremost with marijuana and
9 alcohol and then graduated to liquor and things of
10 that nature. These things in my mind today with
11 high insight create a factor in impairing my
12 judgment or, you know, my decision making process.

13 **PRESIDING COMMISSIONER BRYSON:** Okay. So
14 during this time frame, actually, the run up to the
15 crime, you were 26-year-old old, almost 27,
16 actually. So you weren't a little kid?

17 **INMATE BARTHOLOMEW:** Not really.

18 **PRESIDING COMMISSIONER BRYSON:** And you were
19 still on probation for the crime in Oceanside. That
20 was a robbery -- well, we have a robbery and a
21 burglary, first-degree burglary. You were sentenced
22 to five years formal probation for that. And do you
23 remember that crime?

24 **INMATE BARTHOLOMEW:** Yes.

25 **PRESIDING COMMISSIONER BRYSON:** What happened?

26 **INMATE BARTHOLOMEW:** I went to Oceanside with a
27 friend or someone I considered at the time a friend,

11

1 and we were supposed to, you know, go and party, but
2 it didn't turn out that way. We went and got
3 something to drink. I sat outside on the porch, you
4 know, by the store, and later on he comes out and
5 tells me let's go. And after a while the police
6 come pick us up and ask me what was going on. I
7 didn't know. I never entered the house. I never
8 saw anybody. And you know, then there was actually
9 on me, but I took responsibility for being with him.

10 **PRESIDING COMMISSIONER BRYSON:** Let's maybe
11 back up a little bit. You graduated from high
12 school.

13 **INMATE BARTHOLOMEW:** Yes, ma'am.

14 **PRESIDING COMMISSIONER BRYSON:** Were you on
15 drugs in high school?

16 **INMATE BARTHOLOMEW:** No, ma'am. No, ma'am.

17 **PRESIDING COMMISSIONER BRYSON:** And so actually
18 you had a good start to a career?

19 **INMATE BARTHOLOMEW:** Yes.

20 **PRESIDING COMMISSIONER BRYSON:** How would you
21 characterize your family life when you grew up?

22 **INMATE BARTHOLOMEW:** Pretty stable. Pretty
23 good.

24 **PRESIDING COMMISSIONER BRYSON:** It appears to
25 be. You had some unfortunate terrible things
26 happen. Your mom was killed. That was pretty
27 terrible. Did that affect you deeply or were you

1 pretty young when that happened?

2 **INMATE BARTHOLOMEW:** I was young. But later on
3 it may have played a factor somehow. I mean people
4 would talk about their mothers, and ask where mine
5 was, of course, I would have to tell them deceased
6 or dead. But I can't say that that was something
7 that made me do anything that was wrong or make me
8 do anything that was deviant in society. You know,
9 maybe at a younger or earlier point in my life,
10 maybe I was looking for someone or something to
11 blame my own wrong and faulty actions on, but I
12 can't necessarily say that that was the cause. It
13 was me that was the cause.

14 **PRESIDING COMMISSIONER BRYSON:** So you're
15 grandmother raised you afterwards, and then you came
16 out to California. Now, what happened out here?
17 Did your grandmother until she passed away; were you
18 basically living with her or what happened?

19 **INMATE BARTHOLOMEW:** Yes, ma'am.

20 **PRESIDING COMMISSIONER BRYSON:** And what about
21 your siblings brothers and sisters or whatever?

22 **INMATE BARTHOLOMEW:** The younger ones were
23 living with her also.

24 **PRESIDING COMMISSIONER BRYSON:** I see.

25 **INMATE BARTHOLOMEW:** Not the older ones.

26 **PRESIDING COMMISSIONER BRYSON:** How have they
27 turned out? Anybody in prison in the rest of your

1 family?

2 **INMATE BARTHOLOMEW:** I'm the only one.

3 **PRESIDING COMMISSIONER BRYSON:** That's good.

4 Okay. It sounds like you still have communications
5 with quite a bit of your family; is that correct?

6 **INMATE BARTHOLOMEW:** Yes, ma'am.

7 **PRESIDING COMMISSIONER BRYSON:** Okay. So what
8 were you interested in life? What were doing? Were
9 you working at that time after you graduated from
10 high school?

11 **INMATE BARTHOLOMEW:** Yes, ma'am.

12 **PRESIDING COMMISSIONER BRYSON:** What were you
13 doing?

14 **INMATE BARTHOLOMEW:** I did roofing. I did
15 bagging. I did painting. I did a host of jobs. I
16 worked for Holiday Inn. I worked for Rain Water's
17 Restaurant. That was a pretty upscale restaurant.
18 And it was all right.

19 **PRESIDING COMMISSIONER BRYSON:** Okay. Well,
20 what were your plans? Were you supporting a job
21 habit at this time then while you were out working?

22 **INMATE BARTHOLOMEW:** No.

23 **PRESIDING COMMISSIONER BRYSON:** So how did you
24 get into drugs in a heavy way?

25 **INMATE BARTHOLOMEW:** I believe it started as a
26 fun thing and then it escalated not knowing the
27 limits of what I could drink, what I could smoke, or

1 you know, I just never knew when to call it quits
2 except when I was going to work. And it became more
3 and more escalated over the weekend. And then it
4 stopped from being on the weekends or starting going
5 through throughout the week. So I believe that I
6 became more, I guess, pronounced.

7 **PRESIDING COMMISSIONER BRYSON:** Okay. Is there
8 anything else about your personal factors that's
9 your early life prior to the crime that you'd like
10 to add to help us understand you?

11 **INMATE BARTHOLOMEW:** You know, again, I'd like
12 to take the responsibility for my own actions.
13 Knowing that it was me, but during the time in my
14 life, I believe that as when my grandmother passed
15 away, that was the time when drinking really started
16 playing a factor or I started drinking a little more
17 heavier and started doing things a little more that
18 was deviant in society. Because up until that time,
19 I held jobs. I lived on my own. I paid rent. And
20 I did things that a normal citizen in society would
21 do, but again, I can't say that, you know, because
22 my grandmother died, because I had some misfortunes
23 in life that this was the cause of any own behavior.
24 You know, I just wasn't in control of my own self,
25 and I made faulty decisions at that particular time.
26 And I know that now that I did.

27 **PRESIDING COMMISSIONER BRYSON:** Okay. Well, if

15

1 you'll turn your attention now to Commissioner
2 Keenan.

3 **ATTORNEY HALL:** Commissioner, may I have just
4 one minute to speak with --

5 **PRESIDING COMMISSIONER BRYSON:** Certainly.
6 Let's go off record while he does that.

7 (off the record)

8 **DEPUTY COMMISSIONER KEENAN:** Back on record.
9 All parties previously identified are present.
10 Moving onto post conviction factors. Okay. The
11 last hearing on 9/8/04, we recommended that you get
12 no more 115's, 128 A's, and that you participate in
13 self-help and earn positive chronos. I see that you
14 have a placement score of 19. You've had that since
15 3/1/05. And a total of four 115's, the last one was
16 9/30/93. A total of three 128 A's, the last one was
17 11/27/95. So none of those problems since your last
18 hearing. And looking at the Board Report prepared
19 for this hearing. Under custody history, it talks
20 about your custody history since your last hearing.
21 It says you transferred to Avenal on 9/9/05. Prior
22 to the transfer, you worked at the Central Kitchen.
23 You received average to exceptional reports from
24 supervisors. And while you were at Ironwood,
25 attended numerous group activities. Those are
26 listed below, and I'll get to those in just a
27 second. You are presently assigned to the Facility

16

1 Kitchen. And no reports as yet. Because you were
2 initially assigned to Conflict Anger and in Life
3 Long -- Life Management, CALM class, but elected to
4 voluntarily to unassigned from this assignment.
5 Briefly assigned to Facility Yard Crew, then moved
6 to the Kitchen. You're in the Kitchen now?

7 **INMATE BARTHOLOMEW:** Yes.

8 **DEPUTY COMMISSIONER KEENAN:** Okay. Why did you
9 not do the CALM class? That sounds like a good
10 opportunity.

11 **INMATE BARTHOLOMEW:** I have Criminon, in which
12 I do self-help with, which is a very, you know,
13 significant, good type of program that was there.
14 And the CALM class to my understanding was not
15 supposed to affect the job I had at that particular
16 time. I thought it was like a volunteer type of
17 thing, which I've been going to, and do on my spare
18 time after work.

19 **DEPUTY COMMISSIONER KEENAN:** Was it a full time
20 day?

21 **INMATE BARTHOLOMEW:** Right.

22 **PRESIDING COMMISSIONER BRYSON:** Type of a
23 program.

24 **INMATE BARTHOLOMEW:** That's what the CALM is.

25 **DEPUTY COMMISSIONER KEENAN:** Okay. All right.
26 And then he lists under therapy and self-help
27 activities numerous things since your last hearing.

17

1 Okay. 10/6/04, there is CDC 128 B indicating you
2 began a Victim Awareness Program. 10/13/04,
3 certificate of completion; successful completion of
4 78-week self-help program, and the 12 traditions of
5 Narcotics Anonymous. 78-week program, that's
6 Narcotics Anonymous?

7 **INMATE BARTHOLOMEW:** Uh-huh.

8 **DEPUTY COMMISSIONER KEENAN:** Okay. 12/30/04,
9 certificate of completion, completed six-month
10 course of Study And Rehabilitative Techniques
11 Training. 12/30/04, CDC 128 B, noting chrono
12 indicating subject completed a six-month study
13 program in Anger Management, Communication Skills,
14 Victim Awareness, Stress Management, and applied
15 these skills to problem solving and effective
16 decision making. 6/28/05, certificate of
17 completion. Successful completion of 104-week self-
18 help program including 12-steps of Alcoholics
19 Anonymous. 7/6/05, another 128 B chrono indicating
20 completion of 91 weeks Narcotics Anonymous. 7/8/05,
21 128 B showing laudatory chrono indicating active
22 participant in the A Facilitate Lifer's Group for
23 approximately five years. 7/8/05, 128 B chrono
24 indicating subject completed one-week class designed
25 to empower inmates to communicate effectively.
26 7/19/05, certificate of completion, active
27 participation and one week of effective

1 communication training. And 1/11/06, certificate of
2 completion Crimenon is that how you say it or
3 Criminon?

4 **INMATE BARTHOLOMEW:** Criminon.

5 **DEPUTY COMMISSIONER KEENAN:** Learning
6 improvement course. Okay. And he also notes you've
7 been disciplinary free this span of time since your
8 last hearing. Okay. I also see a chrono in the
9 file. A laudatory chrono. July 10, 2006. This
10 chrono is in the acknowledgment of the excellent
11 work habits of Inmate Bartholomew who is currently
12 assigned at Facility 2 Culinary Recycle Technician.
13 Inmate Bartholomew performs his assigned tasks very
14 well. He's a dependable worker, and completes his
15 tasks with true diligence. He works well with both
16 staff and inmates is an asset to Facility 2 Kitchen.
17 That's from S. Herrera. And then you have another
18 laudatory chrono from A. Isaiah. Inmate Bartholomew
19 has been a Facilitate 2 Culinary Worker as a recycle
20 since 5/18/06. Has been exceptionally loyal, a hard
21 worker, has a good attitude toward peers and
22 supervisors. He's a capable recycler, highly
23 respected, and trustworthy working alongside
24 correctional officers and facility cook. His
25 ability to perform on his duties has been good, and
26 an excellent job working relationship with staff and
27 peers. Okay. I think that's all the updates we

19

1 have. I saw in one of your reports, you had a TABE.
2 You're TABE school was 12 point 9?

3 **INMATE BARTHOLOMEW:** Yes.

4 **DEPUTY COMMISSIONER KEENAN:** Okay. And we
5 already discussed you graduated high school as well?

6 **INMATE BARTHOLOMEW:** Yes.

7 **DEPUTY COMMISSIONER KEENAN:** Okay. All right.
8 And I notice it's in past reports, you completed,
9 let's see, Anger Control. You have an Anger Control
10 Certificate, NA certificate back in '03; '02, an AA
11 certificate; and 7/2/02, Breaking Barriers
12 certificate. You have completed Vocational
13 Landscaping.

14 **INMATE BARTHOLOMEW:** Yes, sir.

15 **DEPUTY COMMISSIONER KEENAN:** And you have also
16 completed Vocational Silk-screening.

17 **INMATE BARTHOLOMEW:** Yes, sir.

18 **DEPUTY COMMISSIONER KEENAN:** And you worked in
19 the Shoe Repair Department? Was that vocational
20 or --

21 **INMATE BARTHOLOMEW:** Yes, sir. Yes, sir. It
22 was both. One was called Shoe Factory; that was
23 work. And one was called Shoe Repair. Shoe Repair
24 was vocational, in which I also completed that.

25 **DEPUTY COMMISSIONER KEENAN:** You did complete
26 it?

27 **INMATE BARTHOLOMEW:** Yes, sir.

1 **DEPUTY COMMISSIONER KEENAN:** Do you have a copy
2 of your certificate of completion?

3 **INMATE BARTHOLOMEW:** Yes, sir.

4 **DEPUTY COMMISSIONER KEENAN:** So you have three
5 completed vocations. I think that's what I'm
6 hearing?

7 **INMATE BARTHOLOMEW:** Yes, sir.

8 **PRESIDING COMMISSIONER BRYSON:** Can you go over
9 it again one more time of the three vocations.

10 **DEPUTY COMMISSIONER KEENAN:** He has Vocational
11 Landscaping, Vocational Silk-screen, and he's
12 telling me now he has Vocational Shoe Repair as
13 well.

14 **PRESIDING COMMISSIONER BRYSON:** Okay.

15 **DEPUTY COMMISSIONER KEENAN:** Has successfully
16 completed Vocational Shoe Repair in '99. Thanks.
17 Okay. Very good.

18 **INMATE BARTHOLOMEW:** Thank you.

19 **DEPUTY COMMISSIONER KEENAN:** All right. I
20 don't think there's anything else. Yeah, go ahead.

21 **INMATE BARTHOLOMEW:** There was also another
22 laudatory chrono that I've got.

23 **DEPUTY COMMISSIONER KEENAN:** Do you know the
24 date on it?

25 **INMATE BARTHOLOMEW:** Yes, sir. Which was from
26 G. Fuente or Correctional Officer Fuente.

27 **DEPUTY COMMISSIONER KEENAN:** What date?

21

1 **INMATE BARTHOLOMEW:** 10/12/06.

2 **DEPUTY COMMISSIONER KEENAN:** Yeah. I don't see
3 it in the file. Maybe it's in here, but I just
4 didn't see it. Okay. All right. Well, I'll look
5 at yours then. 10/12/06, currently assigned as
6 Housing Unit Floor Officer, and I've had the
7 opportunity to observe Inmate Bartholomew --
8 Bartholomew function on a daily basis. He interacts
9 well, and is respective towards staff and other
10 inmates he works with and lives with. Bartholomew
11 maintains cleanliness of his living area and a
12 positive attitude. He lends assistance when called
13 upon to do so. His hard work is appreciated. Okay.
14 It's nice to see that you have everything organized
15 in a folder there. I often see inmates who got a
16 file this thick, and they will tell me they
17 completed something, and I go do you have a
18 certificate, and they'll point to the file, and
19 they'll say it's in there somewhere. So it's nice
20 to see occasional organized person. All right. Am
21 I missing anything or does that pretty much cover
22 the positives and the negatives about your
23 institutional adjustment.

24 **INMATE BARTHOLOMEW:** Yes. That pretty much
25 covers it.

26 **DEPUTY COMMISSIONER KEENAN:** Okay. Oh, that's
27 outrageous.

1 **PRESIDING COMMISSIONER BRYSON:** Yes, these are...
2 yours; is that correct?

3 **INMATE BARTHOLOMEW:** Yes, ma'am. Art.

4 **PRESIDING COMMISSIONER BRYSON:** Quite an
5 artist.

6 **DEPUTY COMMISSIONER KEENAN:** You've done these?

7 **INMATE BARTHOLOMEW:** Yes, sir.

8 **DEPUTY COMMISSIONER KEENAN:** You painted these?
9 What do you paint these with?

10 **INMATE BARTHOLOMEW:** The water paint, color
11 paint, and colored pencil, also pastel, and some
12 charcoal.

13 **DEPUTY COMMISSIONER KEENAN:** Where did you
14 learn how to do this?

15 **INMATE BARTHOLOMEW:** I've been doing that since
16 a child.

17 **PRESIDING COMMISSIONER BRYSON:** Very
18 impressive.

19 **DEPUTY COMMISSIONER KEENAN:** Who's that?

20 **INMATE BARTHOLOMEW:** Just some person.

21 **DEPUTY COMMISSIONER KEENAN:** It looks like a
22 musician, popular musician.

23 **INMATE BARTHOLOMEW:** Miles Davis?

24 **DEPUTY COMMISSIONER KEENAN:** No, no.

25 **ATTORNEY HALL:** It looks like Tracy Chapman.

26 **DEPUTY COMMISSIONER KEENAN:** That's exactly
27 what I was thinking. Okay.

1 **INMATE BARTHOLOMEW:** I have larger ones, but I
2 sent them home and stuff like that.

3 **DEPUTY COMMISSIONER KEENAN:** That's very good.
4 Do you plan to do anything with that?

5 **INMATE BARTHOLOMEW:** Yeah, I wanted to pursue
6 it. I was told that artists don't make too much
7 money, so I had to pursue a different career.

8 **DEPUTY COMMISSIONER KEENAN:** Yeah, that's not
9 necessarily -- bet all your money, you know. Okay.
10 Moving forward to the psychological evaluation then.
11 We have one -- we have one. And it's from Dennis
12 Payne, P-A-Y-N-E, M.D., psychiatrist. And in
13 assessing you, he covers various topics, among them
14 would be, I won't go into all of it. Substance
15 abuse history, he notes that. He says you began
16 drinking around ages of 17, progressing from beer to
17 wine to hard liquor. States he would drink several
18 times a week. Starting using marijuana around 16,
19 and used mostly on weekends. That was his drug of
20 choice. Also, he used cocaine on occasion.
21 Currently the inmate is involved in NA, AA. Under
22 psychiatric and medical histories, says there's no
23 past history of psychiatric treatment, no history of
24 suicide attempts, and has not received any
25 psychiatric treatment within CDC. Does not have any
26 chronic medical problems. Has never undergone any
27 major surgery. He has no history of seizures, and

1 he has never suffered any head injury leading to
2 loss of consciousness. He is not on any medications
3 at the present time. Talks about your parole plans,
4 your current mental status and treatment needs. He
5 says under current mental status, mood is normal
6 affect is appropriate, speech is articulate, and
7 he's calm, makes good eye contact, shows no evidence
8 of thought disorder. He does not exhibit any
9 auditory or visual hallucinations. No suicidal or
10 homicidal thoughts are present. He is oriented of
11 time, person, and place. Concentration is good.
12 Insight and judgment are good. Diagnosis: Axis I,
13 history of marijuana, alcohol, cocaine abuse in
14 remission. Axis II, no diagnosis. Global
15 Assessment of Functioning, 85. Inmate does not
16 exhibit any psychiatric disorder. Goes over the
17 life crime. And he notes in part in regard to
18 inmate's previous arrest history appears the drug
19 abuse, impulsive decisions, and poor judgments were
20 related to erratic behavior, as well as possibly
21 being under the stress of the loss of his
22 grandmother. Under assessment of dangerousness, the
→ 23 psychiatrist says, "Within a controlled setting, the ←
24 inmate's propensity for violence is considered to be
25 ~~less than that of the level one inmate, and would~~
26 not be significantly greater than that of the
→ 27 average citizen in society." Past risk factors of ↵

1 drug abuse, impulsive behavior, and poor judgment
2 appear to be resolved. And under clinical
3 observations, comments, and recommendations, doctor
4 notes that all though inmate has had four CDC number
5 115's since his incarceration, he has been
6 disciplinary free for the past five and one-half
7 years. He's been programming well, educating
8 himself, and shown responsible behavior. He appears
9 intelligent and resourceful enough to find
10 employment in the future, and he shows respect for
11 the rights of others in his actions and in his
12 thinking. He does not exhibit any antisocial type
13 thinking, and shows a desire to be a contributing
14 member of society. The inmate should continue with
15 his current programming. Future parole plans should
16 include abstinence from alcohol and drugs as well as
17 attendance to AA and NA. He should also develop
18 additional parole plans in regard to employment and
19 living arrangements. Is there anything you want to
20 say about that?

21 **INMATE BARTHOLOMEW:** No, sir.

22 **DEPUTY COMMISSIONER KEENAN:** Okay. All right
23 thanks. Give it back to the Chair, please.

24 **PRESIDING COMMISSIONER BRYSON:** Okay. Thank
25 you. Standby, looking for something in particular.

26 Today I just want to note for the record, this
27 inmate has taken responsibility for the crime.

1 However, he is exercising his right not to speak
2 about the crime. However, this Panel does note also
3 in the -- it's actually psychiatrist report of
4 Dennis Payne, M.D., it does state under section 13
5 reviewing the life crime, this would be on page -- I
6 don't know what page it is. Just one moment.

7 **DEPUTY COMMISSIONER KEENAN:** Four,
8 Commissioner.

9 **PRESIDING COMMISSIONER BRYSON:** Is it four.
10 Thank you. Actually in that section, it's the
11 second from the last paragraph. He says, and this
12 is in reference to the life crime, "Next day he
13 heard that the victim had been shot, and he
14 subsequently arrested a few days later. The inmate
15 states that he was not at the crime scene, and was
16 not involved in it. He does however express
17 sympathy for the victim." And I note that this
18 psych report was done in on April 12th, 2004. And
19 of course the Board Report that I'm referring to
20 where Bartholomew says, under his version, "I
21 stipulate as to what is in the court transcript."
22 And in fact does by his attorneys representation
23 here today take responsibility for the crime. That
24 is actually at odds with what he told the
25 psychologist, this psychiatrist, excuse me, it is a
26 psychiatrist back in 2004. So it would appear that
27 a reasonable person would conclude that in fact this

1 inmate has just recently taken responsibility for
2 this crime. I thought that was important to note
3 here today. And then going onto your plans, sir.
4 And we have -- I have looked at the material you
5 handed us immediately prior to this hearing. I have
6 to say that your art and prints is absolutely
7 stunning. It's just breathtaking. It really is.
8 And I don't know if this is an evolution from back
9 to front or -- do you want to talk about it?

10 **INMATE BARTHOLOMEW:** From front to back.

11 **PRESIDING COMMISSIONER BRYSON:** From front to
12 back. Actually, I like the girly ones very much.
13 Yes, I do. They are very -- they are just stunning,
14 both in the color and the lines themselves. They
15 are stunning.

16 **INMATE BARTHOLOMEW:** They are the nurtures of
17 humanity.

18 **PRESIDING COMMISSIONER BRYSON:** I see. That's
19 your -- oh, wow. I hope you will continue to evolve
20 this. This is -- this is truly a nice work because
21 you may not be able to make money, hopefully some
22 day, you will actually be about to do this full
23 time, which I'm sure is every artist's dream to be
24 able to do. This is a very impressive portfolio of
25 work right here. I am sure there are more that have
26 already been (inaudible). Then we also have a
27 letter from you. This is dated March 14th, 2006.

1 Now, perhaps you could address this a little bit.
2 This letter was written, it appears to be a sample
3 of your outreach letter or in response to another
4 letter you got. Could you explain this?

5 **INMATE BARTHOLOMEW:** Yes, ma'am. To a
6 potential job employer out there. And there was
7 responding back and forth with me and saying that,
8 yes, they would help. It would be of service to me
9 to help me find work or employ me as soon as I was
10 ready. But I had to be ready in order for to
11 receive their services.

12 **PRESIDING COMMISSIONER BRYSON:** I understand.

13 **INMATE BARTHOLOMEW:** And that's not the only
14 letter. It was, you know, a few employers that I
15 tried to reach.

16 **PRESIDING COMMISSIONER BRYSON:** I see.

17 **INMATE BARTHOLOMEW:** That I tried to reach out
18 to.

19 **PRESIDING COMMISSIONER BRYSON:** Good.

20 **INMATE BARTHOLOMEW:** Just to actually try to
21 improve any chances of employment to make a
22 livelihood for myself.

23 **PRESIDING COMMISSIONER BRYSON:** Did you send
24 out a resume accompanying that letter or anything of
25 that sort?

26 **INMATE BARTHOLOMEW:** Not what you would call
27 the, I guess, conditional resume, but I did list

1 some things in which I, myself, was capable of
2 doing. The trades that I have, what I was here for,
3 and what I actually intended to do if I got the job.

4 **PRESIDING COMMISSIONER BRYSON:** That's good.

5 Okay. And then we also have from you some material
6 showing that you have actually reached out to
7 various community services groups, and one in
8 particular, the Community Connection, which wrote
9 back on June 7, 2006. This is Sheryl Albrecht, A-L-
10 B-R-E-C-H-T, talking about the program and sending
11 an admission statement for this program, basically
12 help with substance abuse and help people in
13 transition get back into society. And inner face
14 with parole in doing so. So this is, and this is
15 specifically for the San Diego area. And I assume
16 this is where you'd like to relocate?

17 **INMATE BARTHOLOMEW:** Yes, ma'am.

18 **PRESIDING COMMISSIONER BRYSON:** Or to locate
19 actually. Do you still plan and hope to live with
20 Sharon Gamble (phonetic), your fiancé?

21 **INMATE BARTHOLOMEW:** Yes, ma'am.

22 **PRESIDING COMMISSIONER BRYSON:** Do you have
23 anything from her?

24 **INMATE BARTHOLOMEW:** I have letters of the
25 support.

26 **PRESIDING COMMISSIONER BRYSON:** All right. The
27 most recent one would be?

1 **INMATE BARTHOLOMEW:** Would be here.

2 **PRESIDING COMMISSIONER BRYSON:** All right. I
3 appreciate seeing that. Let me ask you because I
4 failed to ask earlier, did you get an opportunity to
5 do an Olson review, and did you do one?

6 **INMATE BARTHOLOMEW:** Yes, ma'am, I did.

7 **PRESIDING COMMISSIONER BRYSON:** I don't know if
8 a copy of this material is in your file. That's the
9 time that you can get copies made and put into your
10 file. We're not allowed to put anything in your
11 Central file, and it's a huge burden. We understand
12 these files get very large, but still, it's an
13 important thing for you to do, and it's good for you
14 to keep the originals, and get copies put into your
15 file. The Olson review is all about you, and every
16 time you get a chance, it's a good idea to do them.
17 And I just wanted to make that recommendation
18 because we understand that some prisoners have not
19 been really given in any information about this.
20 This is a letter from Sharon Gamble of February
21 20th, 2006. And let's see, is this, this is in
22 here, right. So I'm just saying, I'm looking for a
23 signature is all. Did she sign this?

24 **INMATE BARTHOLOMEW:** I believe she sent the
25 original to the correctional counselor.

26 **PRESIDING COMMISSIONER BRYSON:** All right. And
27 this is a copy?

1 **INMATE BARTHOLOMEW:** And I believe that's a
2 copy.

3 **DEPUTY COMMISSIONER KEENAN:** You can take it --

4 **PRESIDING COMMISSIONER BRYSON:** I can see that
5 it's not signed. The copy is not signed. The
6 concern is this. The concern is we want to belief
7 every prisoner that comes in here. Obviously we
8 can't. So when we get a letter that's not signed,
9 we have to ask all right, did someone type this up
10 and represent it -- misrepresent it to either
11 person? I'm going to just reference this letter and
12 just say that in fact this letter exists. It is
13 represented to be from Sharon Gamble in San Diego.
14 And she writes that she feels that you have changed.
15 You put forth many efforts to improve yourself, and
16 she talks about, you're a very important, close,
17 dear person, best love fiancé. And she believes you
18 will be a law-abiding citizen -- I will do what I
19 can to read from the --

20 **ATTORNEY HALL:** I believe a copy of that is in
21 the copy.

22 **PRESIDING COMMISSIONER BRYSON:** I don't have
23 any letters in my packet.

24 **ATTORNEY HALL:** Oh.

25 **PRESIDING COMMISSIONER BRYSON:** I don't know
26 whether they don't get these done on time.

27 **ATTORNEY HALL:** Yes.

1 **PRESIDING COMMISSIONER BRYSON:** Would you like
2 to exert, counsel?

3 **ATTORNEY HALL:** Sure. That's -- anything
4 that's in there, if you would exert, that would give
5 us. Okay. Troy and I plan to be married soon, and
6 upon his release, I will providing him with a place
7 to live, which is [REDACTED] Wabash, W-A-B-A-S-H, Avenue,
8 apartment number 2, San Diego, California, 92104,
9 and there's a telephone number. I will also be
10 providing him with someone to talk to, a partner to
11 pray with, a person to encourage and spend time with
12 him, transportation, and anything I have and can
13 contribute to him.

14 **PRESIDING COMMISSIONER BRYSON:** Okay. Are
15 there other letters in there that you have?

16 **ATTORNEY HALL:** Yes. There's from Paul and
17 Angela Bartholomew. We are writing on behalf of
18 Troy Bartholomew who is currently incarcerated.
19 Troy is our brother, uncle, friend, and loved one.
20 And we miss him dearly. And need him back in our
21 family. Troy has a job waiting for him here. We
22 are a small independent hauling and moving business,
23 and there is definitely a job here waiting for him.
24 We are church going people, and pray for his safety
25 every night in our prayers. And it is signed, Paul
26 Bartholomew and Angela Bartholomew.

27 **PRESIDING COMMISSIONER BRYSON:** Okay. Is that

1 all?

2 **ATTORNEY HALL:** And there are photographs
3 accompanying. There's another one. This one from
4 Keith Reeves Sr., dated March 25, 2006, Mr. Reeves
5 says he's a lifelong friend of Mr. Bartholomew.
6 Today he has come before you to be judged, and if he
7 -- to be judged if he is able to be reintroduced
8 back into society. I know this is not an easy task
9 for anyone. And me as being a father and husband
10 and a tax-paying citizen would hope that your task
11 would be fair and impartial. I would just like to
12 briefly address what I know about Mr. Bartholomew as
13 I've stated in previous letters. (inaudible)
14 embraced by his grandmother who also was like a
15 mother to my own mother. Since Mr. Bartholomew lost
16 his own parents at an early age. And it goes on.
17 He has a very special gift in art that he has
18 steadily improved since we were teenagers. We were
19 typical teenagers from middle class neighborhood
20 San Diego, California, with no problems going up,
21 and I think that is a testament to our upbringing
22 and our steady determination to succeed in life.
23 After we graduated in 1983, I joined the navy, and
24 Troy went straight to work. He stayed employed at a
25 neighborhood grocery store on 32nd Street, and also
26 he worked for an upscale steak house, Rain Waters
27 downtown San Diego, et cetera. We both remain in

1 San Diego throughout the years becoming parents and
2 trying different careers, and have little obstacles.
3 I saw Mr. Bartholomew before the crime occurred. He
4 was clean and sober, and was converting to Islam.
5 And was happy, and he was smiling, and gave me a
6 ride to my job because I used public transportation.
7 And we just talked, and soon after that, I had heard
8 what had happened. Essentially, I'm just giving a
9 little more information to make the vote. Here are
10 a couple of drawings Troy made, and these are
11 enclosed.

12 **PRESIDING COMMISSIONER BRYSON:** Okay. Thank
13 you. Of course, photocopying them basically it's a
14 disaster usually.

15 **ATTORNEY HALL:** And finally, he already has
16 skills valuable for employment if he is granted
17 parole. And he can stay in my home if needed until
18 becoming stable. I am willing to help try to land
19 him employment. I've talked to some employers
20 already. Thanks for your time. Keith Reeves Sr.

21 **PRESIDING COMMISSIONER BRYSON:** All right.
22 Thank you. I also note that you've reached out to
23 the employment development department in the State
24 of California and received a response from Jerica
25 Daleo, D-A-L-E-O, on July 7th, 2006, and saying that
26 Cal Jobs is the website, and this is the South Metro
27 Career Center where the job opportunities exist.

1 And asking about your interest in jobs. What jobs
2 you would be looking for. And then a follow up
3 response. This is from the same agency; is that
4 correct?

5 **INMATE BARTHOLOMEW:** Yes, ma'am.

6 **PRESIDING COMMISSIONER BRYSON:** On 22nd of
7 August 2006, again from Jerica Daleo, and talks
8 about the occupation you mentioned. The ones that
9 may pay you more money would be clerk or building
10 maintenance. There are not too many jobs in Shoe
11 Repair, Silk-screening, Landscaping, and Boats. We
12 do get orders from general office clerks, painters,
13 buildings, maintenance, and sales. And also speaks
14 about the artwork and suggest perhaps graphic arts
15 as the way to get into doing art full time. Have
16 you thought about that?

17 **INMATE BARTHOLOMEW:** Yes, I have. Yes, I have.

18 **PRESIDING COMMISSIONER BRYSON:** Okay.

19 Excellent. All right.

20 **ATTORNEY HALL:** There's also a letter from -- I
21 don't know if you referenced this already Carolyn
22 Baker, did you cover that one?

23 **PRESIDING COMMISSIONER BRYSON:** No, I did not.
24 Go ahead.

25 ~~**ATTORNEY HALL:**~~ This is a handwritten letter
26 from Carolyn Baker who says Troy has proven to
27 better his life. He is taking courses to better his

1 education during his 14 years in prison. He has
2 worked hard, and (inaudible) to show him
3 improvement. Troy has been my friend for more than
4 five years. I have gotten to know and care about
5 him. He has paid society back with 14 years of his
6 life. He needs to be released from prison. He
7 needs to be released to start looking outside
8 prison. He can and will contribute to other people
9 out of prison. He has a gift to improve his life
10 and others. He can build, structure, guide, live a
11 greater quality of life outside prison. Given the
12 opportunity, Troy needs to be free. Keeping him in
13 any longer behind bars will hurt him, me, his
14 family, and many other loved ones. (inaudible) his
15 dad -- I guess his debt has been paid, et cetera.
16 It's very supportive.

17 **PRESIDING COMMISSIONER BRYSON:** Good. Thank
18 you.

19 **ATTORNEY HALL:** And it's signed Carolyn Baker.

20 **PRESIDING COMMISSIONER BRYSON:** All right.

21 Thank you. All right. We have sent out 3042
22 notices. Those agencies go to agencies having a
23 direct interest in your case. One moment before I
24 proceed to that, I just remembered, on the college
25 classes, are you still taking college classes?

26 **INMATE BARTHOLOMEW:** No, ma'am, not here. I
27 just recently, well, one year, came from Ironwood to

1 here. And I'm not sure if this institution offers
2 college courses.

3 **PRESIDING COMMISSIONER BRYSON:** Okay. And what
4 is your interest in the college? What kind of
5 courses are you interested in? What would be your
6 goals that way?

7 **INMATE BARTHOLOMEW:** To get a degree.

8 **PRESIDING COMMISSIONER BRYSON:** Okay. In what?
9 Do you have any idea?

10 **INMATE BARTHOLOMEW:** Just basic or generally
11 education. You know, just to improve any education,
12 my learning ability.

13 **PRESIDING COMMISSIONER BRYSON:** Okay. Great.
14 Thank you. As to 3042 notices, San Diego district
15 attorney's office did plan to be on video conference
16 with us today. However, our late proceedings,
17 precluded their participating this afternoon. And
18 so we'll go to any questions, Commissioner Keenan,
19 you have of the inmate.

20 **DEPUTY COMMISSIONER KEENAN:** Nothing. Thank
21 you.

22 **PRESIDING COMMISSIONER BRYSON:** All right.
23 And, so counsel, do you have questions of the
24 inmate?

25 ~~**ATTORNEY HALL:** No questions.~~

26 **PRESIDING COMMISSIONER BRYSON:** All right.
27 Then I'd like to invite you to make a closing

1 statement.

2 **ATTORNEY HALL:** thank you. Mr. Bartholomew has
3 accepted the record of the conviction of this
4 offense and has taken responsibility for the
5 commitment offense. What he has focused on since
6 his incarceration has been to make himself a better
7 person. He's a young person who at the time of the
8 conviction was 26 years old, and most people would
9 say that was not a very young age to have been
10 convicted of this offense. But what Mr. Bartholomew
11 has done or had down up to that point was really
12 with the assistance of his grandmother after his
13 mother was killed, in fact was able to have a fairly
14 stable social life. Going to school, graduating
15 high school, working, starting a family, as I think
16 Mr. Reeves indicated in his letter. So basically,
17 we know that he was able to educate himself and we
18 know that he did have some problems prior to the
19 commitment offense, some criminal record, but
20 insignificantly, that record did not include any --
21 it was minimal history of any violence. I think
22 that there was just one offense where there was one
23 act of violence of aggression. And what he has done
24 has maintained a disciplinary free tenure since
25 ~~September of 1998, and again focusing on educating~~
26 himself, using his time well. We look at the self-
27 help that he's participated in including AA and NA,

1 Victim's Awareness, Anger Management, Rehabilitative
2 Therapeutic Techniques, Communicating, Communication
3 Skills, Stress Management. In essence, he has
4 embarked in a program of self-help designed to help
5 his maturation and growth. Now he's 41 years old,
6 and clearly has found a calling and passing his time
7 doing his artwork, self-help, and really preparing
8 himself with the vocation, which with he could find
9 gainful employment. He has gotten three vocations,
10 so he's certainly equipped to go out into the
11 community and earn a living legally. With respect
12 to his parole plans, he has alternative residences,
13 and he has demonstrated his initiative by writing to
14 prospective employers, so we know he has employment
15 offers as well as other prospective employers who
16 are waiting for him to come out who are for him to
17 get employment with those companies. So generally,
18 we have a person who is certainly on -- is making
19 himself suitable for parole. In terms of the
20 psychological assessment, we know that Dr. Payne
21 indicated that within a controlled setting, Mr.
22 Bartholomew is considered to be less -- lower than
23 the level one inmate in terms of risk assessment and
24 would not be any risk assessment would not be
25 significantly greater than the average citizen in
26 the community. I think that Dr. Payne has really
27 pointed out that in fact Mr. Bartholomew continues

1 to mature, continues to understand the kind of
2 lifestyle he has prior to coming to prison, and he
3 certainly made a change for the better, and will
4 continue to do so. And we would ask that this Panel
5 find him suitable today. Thank you

6 **PRESIDING COMMISSIONER BRYSON:** Thank you. And
7 now, sir, I would like to give you the opportunity
8 to address this Panel regarding your suitability for
9 parole.

10 **INMATE BARTHOLOMEW:** I would first like to say
11 that I'm sorrowful for the hurting and the pain of
12 which Mr. Seedat and his family is going through.
13 And my spirituality, my spiritual teachings teaches
14 that, you know, we should not take a life for which
15 God holds as sacred, and every life, every person
16 that has life running through them is sacred. So
17 that is something in which I'm afraid of and
18 sorrowful for. I'm also sorry for the pain and the
19 hurt of which I've caused, as well as the
20 disappointments to other people before this. And
21 since that time of this offense, I've taken the
22 responsibility to try to correct myself, and I've
23 been constant in my rehabilitation and my efforts to
24 improve myself to change my life, to change the
25 focus, to change the thinking in which led to my
26 negative behavior, and I believe that that's correct
27 now. And I hope for mercy, I hope for forgiveness,

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1 and also for the capacity to understand what freedom
2 entails. I ask, you know, not to allow my life to
3 be wasted in here what I've learned from my
4 mistakes. In life, we make mistakes. We make
5 faulty decisions. It is not, you know, life itself
6 where mistakes in which we with make to be learned
7 from. And I know that I'm not a criminal. I'm not
8 a monster. I'd like for the Board to actually look
9 at me as a human being who actually made a mistake
10 but have come to recognize the mistakes and faults,
11 which I've made in life, and I'm ready to be
12 reinstated back into the society. I know good and
13 well that I would not let this Panel down. I will
14 not let the society down and my community down. I
15 wouldn't let me family down, and I wouldn't let
16 myself down, you know, if reinstated back into
17 society where I'm ready to be parole. Thank you.

18 **PRESIDING COMMISSIONER BRYSON:** Thank you, sir.
19 We are going to recess for deliberations. The time
20 is now 14:53.

21 **R E C E S S**

22 **--o0o--**

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CALIFORNIA BOARD OF PAROLE HEARINGS

D E C I S I O N

DEPUTY COMMISSIONER KEENAN: Back on record. All parties previously identified are present.

PRESIDING COMMISSIONER BRYSON: I believe we returned everything -- I believe we returned everything, basically, so please look through it. But I think all the materials have been returned to you. The Panel reviewed -- oh, we reconvened for the decision, and the time is now 15:23 in the matter of Troy Bartholomew. Sir, the Panel reviewed all the information received from the public and relied on the following circumstances in concluding that you are not yet suitable for parole and would pose an unreasonable risk of danger to society or a threat to public safety if released from prison. This offense was carried out in an especially cruel and callous manner in that the victim, Dr. Hassen Seedat was particularly vulnerable as he was giving you a ride in his van. At some point during the drive, you asked him to give you some money, and he advised you that he did not have money do give. This offense was carried out in a dispassionate and calculated manner in that after Dr. Seedat stopped for fuel and returned to the vehicle, you put a handgun to his face making pow, pow, pow sounds, then claiming it was a toy gun. Becoming afraid, Dr. Seedat asked you where he could drop you off. You loaded

TROY BARTHOLOMEW H-18717 DECISION PAGE 1 11/14/06

1 the gun with bullets and then began shooting at Seedat's
2 face hitting him four times, which it is a miracle that
3 he lived. You do have a prior history of assaultive
4 behavior, prior criminality, and escalating pattern of
5 criminal conduct, and you were in fact on probation at
6 the time of the commitment offense. As to your
7 institutional behavior, you are presently working in the
8 kitchen and you've been getting average to exceptional
9 work reports. You have had a number of different jobs,
10 and you have to your great credit performed and completed
11 three vocations that of Shoe Repair, Silk-screen, and
12 Landscaping. And you also have been doing other work
13 that would give you marketable skills. You have also
14 taken college classes. You came in as a high school
15 graduate. I should note you've received laudatory
16 chronos, and you have also participated from very good,
17 solid self-help programming, which has been read
18 extensively into the record. You have shown positive
19 change in misconduct that you initially had when you
20 first came. You've shown a positive change in the last
21 basically eight years. Your last 115 of the four in your
22 record, occurred in 1998 for unlawful assembly. So you
23 have started to display positive behavior in prison. As
24 to the psychological report dated April 12, 2004, by Dr.
25 Dennis Payne, basically assigns you a fairly high global
26 assessment of functioning of 85 and also assesses you at

1 a lower than level one inmate risk for violence. As to
2 your parole plans, you have presented the Board today
3 documented alternatives for residence and also a
4 prospective employment opportunities, and you do have
5 marketable skills. As to penal code 3042 responses, we
6 do not have responses from San Diego District Attorney.
7 In a separate decision, the hearing Panel finds it is not
8 reasonable to expect that parole would be granted at a
9 hearing during the following two years. Specific reasons
10 for this finding are as follows: This offense was
11 carried out in an especially cruel and callous manner in
12 that the victim, Dr. Hassen Seedat was particularly
13 vulnerable as he was giving you a ride in his van. At
14 some point during the drive, you asked Dr. Seedat to give
15 you some money, and he advised that he did not have money
16 do give. This offense was carried out in a dispassionate
17 and calculated manner in that after Dr. Seedat stopped
18 for fuel and returned to the vehicle, you put a handgun
19 to his face making pow, pow, pow sounds, then claiming it
20 was a toy gun. Becoming afraid, Dr. Seedat asked you
21 where he could drop you off. You loaded the gun with
22 bullets and then began shooting at Seedat's face hitting
23 him four times. This offense was carried out in a manner
24 demonstrating exceptionally callous disregard for human
25 suffering. First of all, the fear that Dr. Seedat must
26 have experienced when you loaded the gun is pretty

1 unimaginaire. After he fell to the ground, you fled the
2 scene. Per hospital records, Dr. Seedat was first shot
3 in the upper arm, second in the his shoulder, and that
4 lodged in the base of his neck. The third shot entered
5 his jaw, and it went across his throat, and the fourth
6 scraped the back of his head. This was I believe what
7 they -- which was with a pistol, a small caliber pistol.
8 The motive for this crime is moreover inexplicable. This
9 is the most troubling part to the Panel. As you
10 presented her today, and you presented very well. You
11 presented as a mature adult. You obviously have talents
12 and have done impressive programming here in the
13 institution and other institutions. And you have
14 embarked on a program of disciplinary behavior. It
15 really appears that you have gotten it. It makes the
16 crime all the more inexplicable that it even happened.
17 In 2004, you claimed to the psychologist that you didn't
18 commit this crime, and in fact, it appears only recently
19 and including today that you're taking responsibility for
20 this offense. The Panel, therefore, has to believe that
21 your insight and therefore your understanding of the
22 nature and magnitude of this crime is as of yet
23 undetermined, and you remained unpredictable and a threat
24 to public safety. In denying you parole for two years
25 ago, we are placing you in a 2008 calendar for your next
26 subsequent hearing. The Board recommends no more 115's,

1 or 128 A's. That you get self-help, meaning that you
2 continue on your programming, which is including the AA,
3 NA, which you have been participating in on a very
4 regular basis; continue advancing your trade, since
5 skills are obviously perishable, but you are working
6 hard; that you earn positive chronos; that you advance
7 your education as it's available to you, recognizing that
8 it may not always be available within the institution.
9 We are ordering a new psychological evaluation per BPT
10 form 1000 A for your next hearing. And we also encourage
11 you to continue your artwork, and I wish I good luck.
12 And do you have anything to add, Commissioner Keenan?

13 **DEPUTY COMMISSIONER KEENAN:** Did you want me to go
14 over any of the list of what he has done since his last
15 hearing, any positive --

16 **PRESIDING COMMISSIONER BRYSON:** Well, that was --
17 that was read into the record, so that's why I eluded to
18 it in the decision. But I don't feel it's necessary to
19 completely re-elude it into the record at this time.

20 **DEPUTY COMMISSIONER KEENAN:** Oh, okay. I wish him
21 good luck then.

22 **INMATE BARTHOLOMEW:** Well. I asked the last Panel
23 what did I need to be found parole suitable? And they
24 gave me the same things that you just read to me, you
25 know, the self-help, stay disciplinary free, and upgrade.

26 And I did that, so I'm asking what is it that I need to

27 **TROY BARTHOLOMEW H-18717 DECISION PAGE 5 11/14/06**

1 be found parole suitable.

2 **PRESIDING COMMISSIONER BRYSON:** If you continue the
3 programming -- right now, your unsuitability just doesn't
4 outweigh the -- it outweighs rather the suitability
5 factors that you have at this time. You have suitability
6 factors, but you also have, -- you have factors of
7 unsuitability that we had to consider. And those were
8 your disciplinary. The fact that you just recently took
9 responsibility for this crime. You've been denying this
10 crime for a long time, and it's on record. And that's
11 all we are to go by, is that. But today, you've taken
12 responsibility for it, as recently as 2004, you did not.
13 So that's what we have on our record, and that's what we
14 have to deal with, sir. And that's the basis. But I
15 would encourage you to continue because you do present
16 well, and you would be a good candidate at some point.

17 **INMATE BARTHOLOMEW:** And you just don't know how
18 long?

19 **PRESIDING COMMISSIONER BRYSON:** That's correct.
20 That's a discretionary item. And that depends in large
21 part on you.

22 **INMATE BARTHOLOMEW:** Thank you.

23 **PRESIDING COMMISSIONER BRYSON:** Don't discouraged.

24 **INMATE BARTHOLOMEW:** Well, after years and years of
25 coming back and forth, you know, the people that are in
26 your life can't be expected to be continuously be in your

27 **TROY BARTHOLOMEW H-18717 DECISION PAGE 6 11/14/06**

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1 life because time moves on, and people move on. And the
2 next time I come back, and you ask me what jobs do I
3 have, I might not have any or a home or a place to stay.
4 I might not have any because the longer that I'm in here,
5 the less likely people are going to actually believe that
6 I'm doing good.

7 **PRESIDING COMMISSIONER BRYSON:** I understand, sir.

8 **INMATE BARTHOLOMEW:** Thank you.

9 **PRESIDING COMMISSIONER BRYSON:** -- 15:33.

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23 **PAROLE DENIED TWO YEARS**

24 **THIS DECISION WILL BE FINAL ON:** MAR 14 2007

25 ~~**YOU WILL BE PROMPTLY NOTIFIED IF, PRIOR TO THAT**~~

26 **DATE, THE DECISION IS MODIFIED.**


27 **TROY BARTHOLOMEW H-18717 DECISION PAGE 7 11/14/06**

**CERTIFICATE AND
DECLARATION OF TRANSCRIBER**

I, Priscilla Baker, a duly designated transcriber, VINE, MCKINNON & HALL, do hereby declare and certify under penalty of perjury that I have transcribed tape(s) which total one in number and cover a total of pages numbered 1.- 48, and which recording was duly recorded at AVENAL STATE PRISON, at AVENAL, CALIFORNIA, in the matter of the SUBSEQUENT PAROLE CONSIDERATION HEARING of TROY BARTHOLOMEW, CDC No. H-18717, on NOVEMBER 14, 2006, and that the foregoing pages constitute a true, complete, and accurate transcription of the aforementioned tape(s) to the best of my ability.

I hereby certify that I am a disinterested party in the above-mentioned matter and have no interest in the outcome of the hearing.

Dated January 10, 2007, at Sacramento County, California.



Priscilla Baker
Transcriber
VINE, MCKINNON & HALL

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
ABSTRACT OF JUDGMENT
FOR COMMITMENT TO STATE PRISON

THE PEOPLE OF THE STATE OF CALIFORNIA
PLAINTIFF

VS

TROY ANTHONY BARTHOLOMEW

DEFENDANT

DATE DECEMBER 26, 1991

CASE NUMBER: CR124142

PRESENT

HON. MICHAEL D. WELLINGTON

JUDGE OF THE SUPERIOR COURT

EDWIN L. MILLER, Jr., District Attorney

By

BROCK ARSTILL

DEPUTY

JEFFREY THOMA

COUNSEL FOR DEFENDANT

DOUG PECK

CLERK

ELAYNE STUDENBERG, #7975

REPORTER



☐ PROBATION HAVING BEEN HERETOFORE GRANTED AND SAID PROBATION HAVING BEEN REVOKED ON
☒ APPLICATION FOR PROBATION IS DENIED. THE DEFENDANT IS DULY ARRAIGNED (WAIVES FORMAL ARRAIGNMENT).

Count No. ONE WHEREAS THE SAID DEFENDANT ON HIS PLEA
of NOT GUILTY having

been convicted by JURY of ATTEMPTED MURDER IN THE FIRST DEGREE
(THE COURT OR JURY) (DESIGNATION OF CRIME AND DEGREE IF ANY, INCLUDING FACT THAT IT CONSTITUTES A SECOND OR SUBSEQUENT, IF THAT AFFECTS THE SENTENCE)

IN VIOLATION OF PENAL CODE SECTIONS 187(a) AND 664
(REFERENCE TO CODE OR STATUTE, INCLUDING SECTION AND SUBSECTION THEREOF, IF ANY VIOLATED.)

YEAR CRIME COMMITTED IS 1991

THE DEFENDANT IS CREDITED FOR TIME SPENT IN CUSTODY, 273 TOTAL DAYS, INCLUDING:
ACTUAL LOCAL TIME 182 PC 4019, CREDIT 91 STATE INSTITUTIONS TIME

COURT FINDS: ("IF NO FINDING MADE, ENTER "NO FINDING MADE")

NO FINDING MADE THE DEFENDANT ARMED WITH A DEADLY WEAPON AT THE TIME OF HIS COMMISSION
(WAS OR WAS NOT)

THE OFFENSE WITHIN THE MEANING OF SECTIONS 969c AND 12022 OF THE PENAL CODE.

THE DEFENDANT USED A FIREARM IN HIS COMMISSION OF THE OFFENSE WITHIN THE
(USED OR DID NOT USE)

OF SECTIONS 969d AND 12022.5 OF THE PENAL CODE.

NO FINDING MADE THE DEFENDANT ARMED AT THE TIME OF HIS COMMISSION OF THE OFFENSE WITHIN
(WAS OR WAS NOT)

OF SECTION 1203 OF THE PENAL CODE AND THAT WEAPON WAS

DATE	COUNTY AND STATE	THE DEFENDANT HAS HAD PRIOR FELONY CONVICTIONS AS FOLLOWS:	CRIME	DISPOSITION
19-88	SAN DIEGO CO., CA	VC 10851(a) CASE #CR101305		3 YRS FORMAL PROBATION GRANTED ON 2-21-89. REV/REINSTATED 11-28-91. REV/-2 YRS STATE PRISON 12-26-91, CONCURRENT WITH THIS CASE.
19-89	SAN DIEGO CO., CA	PC 459 1ST DEGREE CASE #CRN15678		5 YRS FORMAL PROBATION GRANTED ON 11-28-89. REV/4YRS STATE PRISON 12-26-91, CONCURRENT WITH THIS CASE.

It is therefore ordered, adjudged and decreed that the defendant be punished by imprisonment in the State Prison of the State of California for the term prescribed by law. It is ordered that the sentences shall be served in respect to one another as follows (CC or CS):

THE DEFENDANT IS TO SERVE THE MID TERM OF FOUR (4) YEARS CONSECUTIVE AS TO THE ALLEGATION OF PC12022.5(a). THE DEFENDANT IS TO SERVE THREE (3) YEARS CONSECUTIVE AS TO THE ALLEGATION OF PC12022.7. THE DEFENDANT IS TO SERVE FIVE (5) YEARS CONSECUTIVE AS TO THE PRIOR ALLEGED PURSUANT TO PC667(a). TOTAL TERM IS 12 YEARS PLUS LIFE WITH THE POSSIBILITY OF PAROLE.

and in respect to any prior incomplete sentence(s) as follows (CC or CS):

NOT APPLICABLE

It is further ordered that the defendant be remanded to the Sheriff of the County of San Diego; and pursuant to the aforesaid judgment, this is to command you, the Sheriff, to deliver the defendant into the custody of the Director of Corrections of the State of California at the California Institution for Women at Promera, California at your earliest convenience.

R.J. DONOVAN CORRECTIONAL FACILITY, SAN DIEGO,

The Court DID instruct the defendant of his right to appeal in accordance with Rule 250, California Rules of Court.
did / did not

JUDGE OF THE SUPERIOR COURT
MICHAEL D. WELLINGTON

I certify the foregoing to be a true and correct abstract of the Judgment made and entered on the Minutes of the Superior Court herein.

Dated: 12-26-91

KENNETH E. MARTONE
CLERK OF THE SUPERIOR COURT

By Doug Peck DOUG PECK, Deputy

JS44

(Rev. 07/89)

The JS-44 civil cover sheet and the information contained herein neither supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States on September 19, 2004, is required for the use of the Clerk of Court for the purpose of initiating the civil process sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Troy A. Bartholomew

Mendoza-Powers

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

Kings

CIVIL COVER SHEET

FILING FEE PAID	
Yes	No
IFP MOTION FILED	
Yes	No
COPIES SENT TO	
Court	ProSe

FILED
JUL 14 2008
CLERK, U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA BY <i>[Signature]</i> DEPUTY

RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN NON-CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Troy A. Bartholomew
PO Box 9
Avenal, CA 93204
H-18717

ATTORNEYS (IF KNOWN)

'08 CV 1270 IEG NLS

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | |
|---|---|---|---|
| Citizen of This State | <input type="checkbox"/> 1 <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 2254

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reappointment
<input type="checkbox"/> Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury-Medical Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 640 RR & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	PERSONAL PROPERTY	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395R)	<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 160 Stockholders Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	LABOR	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 875 Customer Challenge 12 USC
<input type="checkbox"/> Other Contract	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 892 Economic Stabilization Act
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(n))	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 740 Railway Labor Act	FEDERAL TAX SUITS	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input checked="" type="checkbox"/> 530 General	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 791 Empl. Ret. Inc.	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 240 Tort to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> Security Act		<input type="checkbox"/> 950 Constitutionality of State
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 550 Civil Rights			<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 290 All Other Real Property					

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

Docket Number

DATE 7/14/2008

SIGNATURE OF ATTORNEY OF RECORD

R. Mello

CR